

1 09:32AM UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA UNITED STATES OF AMERICA : : Plaintiff, : Criminal Action : No. 10-739M-11 v. : : LIEUTENANT DANIEL CHOI, : August 31, 2011 : 9:45 a.m. : : Defendant. : Washington, D.C. : : MORNING SESSION TRANSCRIPT OF BENCH TRIAL PROCEEDINGS BEFORE THE HONORABLE JOHN M. FACCIOLA, UNITED STATES MAGISTRATE JUDGE APPEARANCES: For the United States: Angela S. George, Assistant U.S. Attorney U.S. ATTORNEY'S OFFICE 555 Fourth Street, NW Room 4444 Washington, DC 20530 (202) 252-7943 Fax: (202) 514-6010 Email: Angela.george@usdoj.gov For the Defendant: Robert J. Feldman, Esq. 14 Wall Street 20th Floor New York, NY 10005 (917) 657-5177 Email: robertjfeldman@aol.com Norman Elliott Kent, Esq. KENT & CORMICAN, PA 110 SE 6th Street Suite 1970 Fort Lauderdale, FL 33301 (954) 763-1900 Scott L. Wallace, RDR, CRR, Official Court Reporter (202) 354-3196 * swallace.reporter@gmail.com	3 09:44AM 1 MORNING SESSION, AUGUST 31, 2011 09:45AM 2 (9:44 a.m.) 09:45AM 3 MR. FELDMAN: With the Court's permission, Mr. Kent is 09:45AM 4 going to argue an oral motion. Is that okay? 09:45AM 5 THE COURT: Sure. 09:45AM 6 MR. FELDMAN: Thank you, sir. 09:45AM 7 MS. GEORGE: Your Honor, the government hasn't received 09:45AM 8 any copies of any motions. 09:45AM 9 THE COURT: I'm sorry? 09:45AM 10 MS. GEORGE: I haven't received any motions. 09:45AM 11 MR. FELDMAN: It was filed last night and we have a 09:46AM 12 courtesy copy right here. 09:46AM 13 THE COURT: Yes, please. 09:46AM 14 THE COURTROOM CLERK: Wait. We're not on record. Give me 09:46AM 15 just a few minutes for the change of clerks. 09:46AM 16 This is Criminal Case year 2010 739M, United States versus 09:46AM 17 Lieutenant Daniel Choi. Angela George for the government; Robert 09:46AM 18 Feldman and Norman E. Kent for the defendant. This is a bench 09:46AM 19 trial, day 3. 09:46AM 20 THE COURT: Yes, sir. 09:46AM 21 MR. KENT: Good morning, Your Honor. Last night my 09:46AM 22 co-counsel, Robert Feldman, communicated with Ms. George in a 09:46AM 23 letter asking for certain discovery, and in an abundance of 09:46AM 24 caution, I late last evening filed a motion to compel production 09:47AM 25 of certain specific evidence in this cause. And the reasons Scott L. Wallace, RDR, CRR, Official Court Reporter (202)354-3196 * swallace.reporter@gmail.com
2 Email: Norm@normkent.com APPEARANCES: Cont. For the Defendant: Ann Christine Wilcox, Esq. LAW OFFICE OF ANN WILCOX 1500 Massachusetts Avenue, NW Suite 252 Washington, DC 20005 (202) 441-3265 Email: Wilcox_Ann@yahoo.com Court Reporter: Scott L. Wallace, RDR, CRR Official Court Reporter Room 6503, U.S. Courthouse Washington, D.C. 20001 202.354.3196 swallace.reporter@gmail.com Proceedings reported by machine shorthand, transcript produced by computer-aided transcription. Scott L. Wallace, RDR, CRR, Official Court Reporter (202)354-3196 * swallace.reporter@gmail.com	4 09:47AM 1 therefore evolve out of the pretrial motion that was actually 09:47AM 2 filed by the United States government when they sought to dismiss 09:47AM 3 the defense's claim for selective prosecution. The irony of that 09:47AM 4 motion is that it was filed pretrial even before the defense had 09:47AM 5 filed a motion for selective prosecution, and it was kind of like 09:47AM 6 striking from the game a ball that had not even yet been thrown. 09:47AM 7 But during the course of this trial and the direct testimony of 09:47AM 8 certain witnesses, evidence has been elicited that suggests, in 09:47AM 9 fact, the government may have a case where selective prosecution 09:47AM 10 can be raised by the defense. 09:47AM 11 In support thereof, we would point out to the Court that 09:47AM 12 at pages 49 through 52 of the first day transcripts, Lieutenant 09:48AM 13 LaChance, in response to a direct question elicited by Ms. 09:48AM 14 George, said there were e-mail briefings between the Secret 09:48AM 15 Service, which is the agency that protects the president of the 09:48AM 16 United States, and the United States Park Police related to this 09:48AM 17 particular incident, and we have asked for copies now in this 09:48AM 18 motion to compel those -- 09:48AM 19 THE COURT: Can you be as precise as possible? 09:48AM 20 MR. KENT: We want the e-mail briefs. And then we further 09:48AM 21 served -- 09:48AM 22 THE COURT: E-mail briefs? 09:48AM 23 MR. KENT: The e-mails. 09:48AM 24 THE COURT: The e-mails between whom and whom? Why don't 09:48AM 25 you just let me see a copy of the motion. Scott L. Wallace, RDR, CRR, Official Court Reporter (202)354-3196 * swallace.reporter@gmail.com

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09:48AM 1 MR. KENT: Okay.

09:48AM 2 THE COURT: I haven't seen it.

09:48AM 3 MR. KENT: Here it is at paragraph 16, Your Honor, of the

09:48AM 4 motion.

09:48AM 5 THE COURT: Do you have a copy that I can use? May I use

09:48AM 6 this one?

09:48AM 7 MR. KENT: Yes.

09:48AM 8 THE COURT: All right. So it's 16, "issued subpoenas --

09:48AM 9 all documents electronically stored pertaining to Dan Choi, and

09:49AM 10 any and all such notes leading up to and including his November

09:49AM 11 15th, 2010 arrest in front of the White House, providing any

09:49AM 12 material, memorandum, notes, e-mails, related to Choi being

09:49AM 13 prosecuted therefrom, including the decision to do so in Federal

09:49AM 14 Court, and any surveillance and intelligence or briefing

09:49AM 15 materials evolving out of the same criminal activity which is the

09:49AM 16 subject of this prosecution."

09:49AM 17 MR. KENT: That's specifically what we're asking for.

09:49AM 18 Thank you.

09:49AM 19 THE COURT: Okay. Ms. George, is there any reason why you

09:49AM 20 should not be compelled to produce that?

09:49AM 21 MS. GEORGE: Yes, Your Honor, because the document, their

09:49AM 22 motion, doesn't squarely place the information that they're

09:49AM 23 seeking as discovery material under Rule 16.

09:49AM 24 In addition, the government would place on the record that

09:49AM 25 the e-mail is not even considered *Jencks* material under the

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09:49AM 1 *Jencks* Act of the U.S. Federal Code. The e-mail is not even

09:49AM 2 offered by Lieutenant LaChance. And the only information that

09:50AM 3 was presented in court was the information to show the state of

09:50AM 4 mind of Lieutenant LaChance as to why he reported to the White

09:50AM 5 House sidewalk.

09:50AM 6 And as I recall and as I shared with Mr. Feldman, at that

09:50AM 7 time the government did not even offer that exhibit into

09:50AM 8 evidence. The Court asked me to provide it to Mr. Feldman, and

09:50AM 9 then the Court accepted it as evidence. The government is not --

09:50AM 10 I just want the record to reflect exactly what happened.

09:50AM 11 In addition to that, Your Honor, there wasn't a letter

09:50AM 12 sent to the government last night, there was an e-mail, and in

09:50AM 13 that e-mail defense counsel didn't even reference Rule 16, but I

09:50AM 14 assume that the Court and the government received this motion

09:50AM 15 today as a request.

09:50AM 16 THE COURT: I think this is where we are. This motion was

09:50AM 17 filed and you had not had an opportunity to respond to it in

09:50AM 18 writing. Additionally, it would appear to me that there is the

09:51AM 19 potential of the government asserting either of two privileges;

09:51AM 20 one would be the law enforcement privilege, and the second would

09:51AM 21 be the deliberative process privilege. Have you consulted with

09:51AM 22 the civil division of the U.S. Attorney's Office as to whether

09:51AM 23 they will file an opposition claiming those privileges on behalf

09:51AM 24 of the executive branch?

09:51AM 25 MS. GEORGE: No, Your Honor, I just received the motion in

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09:51AM 1 court as the Court did.

09:51AM 2 THE COURT: Well, what I am going to do is I will continue

09:51AM 3 with the trial. We will not end the presentation of the -- we'll

09:51AM 4 get as much as we can in terms of the presentation of the

09:51AM 5 evidence, and then I will give you a reasonable period of time to

09:51AM 6 oppose this.

09:51AM 7 MS. GEORGE: Thank you, Your Honor.

09:51AM 8 THE COURT: I do this because the deliberative process

09:51AM 9 privilege, there is a methodology by which it has to be asserted,

09:51AM 10 and it has to be asserted by the most senior official in that

09:51AM 11 agency. So if I may, may I ask that you please bring this to the

09:51AM 12 attention of the civil division. So I will take this motion

09:52AM 13 under advisement and await your written response and return to it

09:52AM 14 later.

09:52AM 15 MS. GEORGE: Thank you, Your Honor.

09:52AM 16 MR. FELDMAN: Thank you so much, Your Honor. We're ready

09:52AM 17 to roll.

09:52AM 18 THE COURT: Thank you very much.

09:52AM 19 MS. GEORGE: Your Honor, on behalf of Lieutenant LaChance,

09:52AM 20 he asked me to apprise the Court of his schedule and he's

09:52AM 21 requesting -- he agreed with Mr. Feldman to be called first. He

09:52AM 22 has a personal matter.

09:52AM 23 MR. FELDMAN: If that's okay with you.

09:52AM 24 MS. GEORGE: And also the government -- it's fine. The

09:52AM 25 government would just state on the record that it does not

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09:52AM 1 believe that there's any evidence in the record that would

09:52AM 2 justify the recalling of Lieutenant LaChance. There was nothing

09:52AM 3 mentioned in the defendant's case of the two witnesses that --

09:52AM 4 THE COURT: Nobody owns the witness. You can call

09:52AM 5 whatever witness you would like.

09:52AM 6 MS. GEORGE: I understand.

09:52AM 7 MR. FELDMAN: Thank you.

09:52AM 8 THE COURT: And just before -- I just had a thought that I

09:52AM 9 would appreciate if you would convey to the people in the U.S.

09:52AM 10 Attorney's Office.

09:52AM 11 MS. GEORGE: Yes, Your Honor.

09:52AM 12 THE COURT: I believe that a *prima facie* case of selective

09:52AM 13 prosecution has been made out, and this material under Rule 16 is

09:53AM 14 relevant, but now the question becomes what, if any, privileges

09:53AM 15 you intend to assert.

09:53AM 16 MR. FELDMAN: Should I call the witness, Your Honor?

09:53AM 17 MR. KENT: There was one minor housekeeping matter with

09:53AM 18 Ms. George.

09:53AM 19 We also filed last night a motion to recover a copy of the

09:53AM 20 evidence and property received attended to the --

09:53AM 21 MR. FELDMAN: I'm sorry, Judge, can I have a moment,

09:53AM 22 please? I'm sorry, Your Honor.

09:53AM 23 (Discussion had off the record.)

09:53AM 24 MR. FELDMAN: Withdrawn.

09:53AM 25 THE COURT: Thank you. Can we have our next witness?

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09:53AM **1** MR. FELDMAN: Yes. I'm sorry. Can you do me a favor and
 09:53AM **2** get Lieutenant LaChance?
 09:54AM **3** (ROBERT LA CHANCE, DEFENDANT'S WITNESS, SWORN.)
 09:54AM **4** DIRECT EXAMINATION OF ROBERT LACHANCE
 09:54AM **5** BY MR. FELDMAN:
 09:54AM **6** **Q.** Good morning, Lieutenant. How are you?
 09:54AM **7** **A.** **Good morning, sir.**
 09:54AM **8** **Q.** Thank you for waiting around. Okay. Do you recall when
 09:54AM **9** you were under direct examination by Ms. George two days ago
 09:55AM **10** hearing the following question, the following questions and
 09:55AM **11** giving the following answers: Page 49 -- August 29th, 2011 --
 09:55AM **12** page 49, line 11.
 09:55AM **13** "Question: Without --" by Ms. George "-- without telling
 09:55AM **14** us the specifics of that information, could you please tell the
 09:55AM **15** Court how you received that information?"
 09:55AM **16** "Answer:" --
 09:55AM **17** MS. GEORGE: Objection, Your Honor. This goes to the
 09:55AM **18** ruling that the Court just made. The government would object to
 09:55AM **19** this line of questioning as the Court has given the government an
 09:55AM **20** opportunity to respond in writing.
 09:55AM **21** THE COURT: Well, I don't -- the objection is overruled.
 09:55AM **22** I really don't know where this is going. Please go on.
 09:55AM **23** MR. FELDMAN: Thank you, Your Honor.
 09:55AM **24** "Answer:" -- by you, sir -- "I was originally notified by
 09:55AM **25** e-mail."

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09:55AM **1** "Question: Did you have any conversations with Captain
 09:55AM **2** Beck or any other supervisor in reference to that demonstration?"
 09:56AM **3** "Answer: Yes."
 09:56AM **4** "Question: And prior to November 15th, did you receive
 09:56AM **5** any information from any other law enforcement agencies about the
 09:56AM **6** demonstration on November 15th?"
 09:56AM **7** "Answer: Yes."
 09:56AM **8** "Question: And did you -- which agency was that?"
 09:56AM **9** "Answer: It was the e-mail that was forwarded to me from
 09:56AM **10** the Secret Service."
 09:56AM **11** MS. GEORGE: Objection.
 09:56AM **12** THE COURT: Overruled.
 09:56AM **13** MR. FELDMAN: Do you recall that testimony? That's the
 09:56AM **14** only question.
 09:56AM **15** THE WITNESS: Yes, sir.
 09:56AM **16** BY MR. FELDMAN:
 09:56AM **17** **Q.** Is that the true and accurate reading of your testimony?
 09:56AM **18** MS. GEORGE: Objection.
 09:56AM **19** THE COURT: Overruled.
 09:56AM **20** THE WITNESS: I believe so.
 09:56AM **21** BY MR. FELDMAN:
 09:56AM **22** **Q.** Okay. I continue. By Ms. George. "Question: --" I left
 09:56AM **23** out -- this is not a jury trial, Judge, and I left out this
 09:56AM **24** part, which is the colloquy, Your Honor. There's no jury, Your
 09:57AM **25** Honor. There's a question by Ms. George prior -- subsequent to

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09:57AM **1** what I just read.
 09:57AM **2** "And did you receive any details, for instance, about how
 09:57AM **3** many people --
 09:57AM **4** And then Mr. Feldman cut Ms. George off, it looks like.
 09:57AM **5** "Judge, who's testifying?"
 09:57AM **6** And Ms. George said: "Your Honor, it's entered for
 09:57AM **7** course of conduct, and that's why -- I'm just trying --"
 09:57AM **8** "The Court: Objection overruled. Let's get going. Say
 09:57AM **9** your question again."
 09:57AM **10** By Ms. George.
 09:57AM **11** "Question: Lieutenant LaChance, would you please tell
 09:57AM **12** the Court what information was provided? Without talking about
 09:57AM **13** the subject matter of the demonstration, what information was
 09:57AM **14** given to you about the nature of the demonstration?"
 09:57AM **15** Mr. Feldman: Leading at worst and artful at best." This
 09:57AM **16** is not part of that. I wish I could have withdrawn that
 09:57AM **17** objection. This is on the record, but I say it prospectively,
 09:57AM **18** Judge. I think you understand what I mean.
 09:57AM **19** THE COURT: I do.
 09:57AM **20** MR. FELDMAN: Thank you.
 09:57AM **21** "I would ask to rephrase it."
 09:58AM **22** "The Court: Were there discussions about what was going
 09:58AM **23** to happen? Just yes or no. Were there discussions about what
 09:58AM **24** was going to happen, potentially going to happen at the White
 09:58AM **25** House that day?"

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09:58AM **1** To which you replied, "The Witness: --" Lieutenant
 09:58AM **2** LaChance "-- yes, sir."
 09:58AM **3** "The Court: Did it take place among the command structure
 09:58AM **4** of the U.S. United States Park Police?"
 09:58AM **5** "The witness: Yes, sir."
 09:58AM **6** "The Court: So you were aware that something was going to
 09:58AM **7** happen?"
 09:58AM **8** "The witness: Yes, sir."
 09:58AM **9** "The Court: That's fine. Let's proceed."
 09:58AM **10** BY MR. FELDMAN:
 09:58AM **11** **Q.** Do you recall your question -- Ms. George's questions and
 09:58AM **12** your answers as I read them?
 09:58AM **13** **A.** **That sounds correct, sir.**
 09:58AM **14** **Q.** Okay. Do you recall the Court's colloquy and questions
 09:58AM **15** of you, sir?
 09:58AM **16** **A.** **In reference to what you just read, they sound exactly as**
 09:58AM **17** **to what I said.**
 09:59AM **18** **Q.** So you would agree that that -- that what I just read
 09:59AM **19** into the record was a fair and accurate reading of what actually
 09:59AM **20** occurred in reality?
 09:59AM **21** **A.** **Yes, sir.**
 09:59AM **22** **Q.** Thank you.
 09:59AM **23** (Discussion had off the record.)
 09:59AM **24** BY MR. FELDMAN:
 10:00AM **25** **Q.** One more question. You testified, and I don't have the

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10:00AM	1	exact words in front of me, but if you want I can take a long	
10:00AM	2	time, but I think you'll agree you're a very intelligent,	
10:00AM	3	extremely -- and I say that not to, you know, not to -- I say	
10:00AM	4	that in full sincerity.	
10:00AM	5	You remember testifying that you relied on Sergeant	
10:00AM	6	Adamchik to be nonviolent or to be -- to -- that you trusted him	
10:00AM	7	to be appropriate, to use appropriate force, if any, is that	
10:00AM	8	true?	
10:00AM	9 A.	Are you speaking of during the arrest process?	
10:00AM	10 Q.	Yes, sir.	
10:00AM	11 A.	Yes, sir.	
10:00AM	12	MR. FELDMAN: No further questions, Your Honor.	
10:00AM	13	THE COURT: Thank you. Any other questions?	
10:00AM	14	MS. GEORGE: No, Your Honor.	
10:00AM	15	THE COURT: Thank you so much, lieutenant. May the	
10:00AM	16	lieutenant now return to work?	
10:00AM	17	MR. FELDMAN: Yes, please. Thank you, sir. Could you do	
10:00AM	18	me a favor and have your supervisor come in after you?	
10:00AM	19	THE WITNESS: Absolutely.	
10:01AM	20	MR. FELDMAN: Your Honor, could Ms. Wilcox sit with us.	
10:01AM	21	THE COURT: Who is Ms. Wilcox?	
10:01AM	22	MR. FELDMAN: She's an attorney, the first attorney.	
10:01AM	23	THE COURT: How are you, Ms. Wilcox? Yes, she is a member	
10:01AM	24	of the bar of the Court. Please, come on up.	
10:01AM	25	THE WITNESS: Thanks.	
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10:01AM	1	THE COURT: Nice to see you again.	
10:01AM	2	THE COURTROOM CLERK: What's her first name?	
10:01AM	3	THE COURT: Would you please enter your appearance for the	
10:01AM	4	record, Ms. Wilcox.	
10:01AM	5	MS. WILCOX: Good morning, Your Honor. Ann Wilcox, member	
10:01AM	6	of the bar.	
10:01AM	7	THE COURT: Why don't you give your address.	
10:01AM	8	THE WITNESS: Yes, 1500 Massachusetts Avenue, Northwest,	
10:01AM	9	Number 252, Washington, D.C. 20005. My bar number is 429108.	
10:02AM	10	THE COURT: Thank you.	
10:02AM	11	(PHILIP J. BECK, DEFENDANT'S WITNESS, SWORN.)	
10:02AM	12	<u>DIRECT EXAMINATION OF PHILIP J. BECK</u>	
10:02AM	13	<u>BY MR. FELDMAN:</u>	
10:02AM	14 Q.	Good morning, Captain Beck. How are you?	
10:02AM	15 A.	Let me get situated here. Good morning.	
10:02AM	16 Q.	How are you?	
10:02AM	17 A.	Good.	
10:02AM	18 Q.	My name is Robert Feldman. I represent Lieutenant Dan	
10:02AM	19	Choi. I'm going to be asking you some questions. If you don't	
10:02AM	20	understand any of the questions, please indicate to the Court or	
10:02AM	21	to me and I'll try to rephrase. Is that clear, sir?	
10:02AM	22 A.	Yes.	
10:02AM	23 Q.	Thank you, sir. Can you please state your rank and your	
10:03AM	24	duties as on the year 2010, starting in March of 2010?	
10:03AM	25 A.	March 2010 -- My name is Captain Phil Beck, and in March	
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		15	
10:03AM	1	of 2010 I was the lieutenant in charge of the S.W.A.T. team for	
10:03AM	2	the United States Park Police.	
10:03AM	3 Q.	Were you present at a demonstration near the White House	
10:03AM	4	on March 18th, 2010, specifically the demonstration protesting	
10:03AM	5	the Don't Ask, Don't Tell policy?	
10:03AM	6 A.	Yes.	
10:03AM	7 Q.	Okay. Do you recall what your duties were that day?	
10:03AM	8 A.	Yes.	
10:03AM	9 Q.	Please explain what your duties were.	
10:03AM	10 A.	I was the S.W.A.T. commander for the United States Park	
10:03AM	11	Police on that day.	
10:03AM	12 Q.	What were your duties pursuant to that rank and command	
10:03AM	13	that day? Other than being the leader, what were your specific	
10:03AM	14	duties, sir?	
10:03AM	15 A.	I'm responsible for the coordination of S.W.A.T.	
10:03AM	16	opportunities and callouts for special weapons, as well as K-9	
10:04AM	17	throughout the United States Park Police, and part of that falls	
10:04AM	18	to handling demonstrations and crowd control, crowd management.	
10:04AM	19 Q.	Did -- you see my client, Lieutenant Dan Choi, here in	
10:04AM	20	court?	
10:04AM	21 A.	Do I see him here in court?	
10:04AM	22 Q.	Yes.	
10:04AM	23 A.	Yes.	
10:04AM	24 Q.	Please point him out to the Court.	
10:04AM	25 A.	Seated at defense counsel wearing the military uniform,	
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10:04AM	1	(indicating.)	
10:04AM	2	MR. FELDMAN: Indicating my client, Your Honor.	
10:04AM	3	THE COURT: Thank you, sir.	
10:04AM	4	BY MR. FELDMAN:	
10:04AM	5 Q.	Did you see him obstruct traffic that day?	
10:04AM	6 A.	No.	
10:04AM	7 Q.	Did you see him acting in a threatening manner that day?	
10:04AM	8 A.	No.	
10:04AM	9 Q.	Did you see him impose any threat whatsoever to any	
10:04AM	10	activities that day at all?	
10:04AM	11	THE COURT: Could you try that question again? You left	
10:04AM	12	out a word.	
10:04AM	13	MR. FELDMAN: Yes. Can I have the statute? Thank you,	
10:04AM	14	sir. Thank you. My memory. Okay.	
10:04AM	15	BY MR. FELDMAN:	
10:05AM	16 Q.	Did you see my client pose a threat to public safety, law	
10:05AM	17	enforcement actions, and emergency operations that involve a	
10:05AM	18	threat to public safety or park resources, or other activities	
10:05AM	19	where the control of public movement and activities is necessary	
10:05AM	20	to maintain order and public safety?	
10:05AM	21 A.	Yes.	
10:05AM	22 Q.	Please explain.	
10:05AM	23 A.	Mr. Choi handcuffed himself to the fence at 1600	
10:05AM	24	Pennsylvania Avenue, along with another individual.	
10:05AM	25 Q.	On what day was that?	
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10:05AM **1 A. On the 18th.**

10:05AM **2 Q.** Okay. Does that pose a threat to public safety?

10:05AM **3 A. In my opinion, yes, it did.**

10:05AM **4 Q.** Explain.

10:05AM **5 A. It caused a distraction and gathered a crowd in which we**

10:05AM **6 needed to manage that. Also there were concerns that the**

10:05AM **7 security at the White House complex could be compromised and**

10:05AM **8 therefore we were dealing with a demonstration in that area.**

10:05AM **9 Q.** Specifically -- well, you just testified about five

10:05AM **10 minutes ago -- two minutes ago that you didn't see him pose a**

10:06AM **11 threat in any way, shape, manner, or form, and then when the**

10:06AM **12 eminent Court told me to include the exact words "public**

10:06AM **13 safety," how did -- -- well, did he pose -- were there any**

10:06AM **14 operations involving wildlife that day?**

10:06AM **15 A. I'm sorry, I don't understand.**

10:06AM **16 Q.** Were there any demonstrations involving wildlife

10:06AM **17 management that day, that you know of?**

10:06AM **18 A. I don't know.**

10:06AM **19 Q.** In my client's proximity, of course.

10:06AM **20 A. I don't remember.**

10:06AM **21 Q.** There may have been horses around?

10:06AM **22 A. We typically have horses there, yes.**

10:06AM **23 Q.** Were there any hippopotamuses around him?

10:06AM **24 A. I didn't see a hippopotamus.**

10:06AM **25 Q.** But there may have been a horse around him, right?

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10:06AM **1 A. We have horses with the United States Park Police, and**

10:06AM **2 they may have been in proximity.**

10:06AM **3 Q.** Oh, so that was the "posed a threat"? That was the

10:06AM **4 threat that he posed?**

10:06AM **5 A. I didn't say he posed a threat.**

10:06AM **6 Q.** Was he a threat to the wildlife management operations?

10:06AM **7 Yes or no?**

10:06AM **8 A. I'm sorry, I really don't understand your question.**

10:07AM **9 Q.** I'll repeat it. Did Lieutenant Dan Choi interfere with

10:07AM **10 wildlife management operations involving animals that day?**

10:07AM **11 A. No.**

10:07AM **12 Q.** Yes or no?

10:07AM **13 A. Not that I recall.**

10:07AM **14 Q.** Okay. Did he pose a threat to search and rescue

10:07AM **15 operations that day?**

10:07AM **16 A. No.**

10:07AM **17 Q.** Did he pose a threat to fire fighting operations that

10:07AM **18 day?**

10:07AM **19 A. No.**

10:07AM **20 Q.** Okay. So, please explain how two veterans of the Iraq

10:07AM **21 war attempting to promulgate First Amendment ideas posed a**

10:07AM **22 threat to public safety.**

10:08AM **23 A. Before I arrived on the scene, there were over a hundred**

10:08AM **24 people on the sidewalk, including your client, and that was**

10:08AM **25 cleared off prior to my arrival, which did gather a crowd which**

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10:08AM **1 could have promoted public safety issues.**

10:08AM **2 Q.** Now, in your opinion as the supervisor of all these men

10:08AM **3 and the supervisor of Lieutenant LaChance who is also a**

10:08AM **4 supervisor of all the men, did you take into consideration his**

10:08AM **5 First Amendment rights, yes or no, or you don't know?**

10:08AM **6 MS. GEORGE: Objection. It assumes facts not in evidence**

10:08AM **7 in relationship to March 18th. Lieutenant LaChance wasn't**

10:08AM **8 involved.**

10:08AM **9 THE COURT: Was LaChance involved on the 18th?**

10:08AM **10 THE WITNESS: No.**

10:08AM **11 MR. FELDMAN: I stand corrected.**

10:08AM **12 THE COURT: In fact, LaChance is your successor?**

10:08AM **13 THE WITNESS: Correct.**

10:08AM **14 BY MR. FELDMAN:**

10:08AM **15 Q.** Removing Lieutenant LaChance from the equation, I repeat

10:08AM **16 my question. Shall I have it read back?**

10:08AM **17 MR. FELDMAN: Your Honor, could you order it read back.**

10:08AM **18 Before you read it back, Mr. Scott, can you -- when you**

10:08AM **19 say Lieutenant LaChance -- I say to you, Captain Beck, forget**

10:09AM **20 that name.**

10:09AM **21 (Court reporter read back last question as requested.)**

10:09AM **22 THE COURT: Whose First Amendment rights?**

10:09AM **23 MR. FELDMAN: Lieutenant Dan Choi.**

10:09AM **24 THE WITNESS: Absolutely.**

10:09AM **25 BY MR. FELDMAN:**

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10:09AM **1 Q.** Specifically, in your consideration of Lieutenant Dan

10:09AM **2 Choi's First Amendment rights, what did you consider?**

10:09AM **3 A. His right to express his First Amendment privileges.**

10:09AM **4 Q.** Were you aware of the cause that he was expressing about?

10:09AM **5 A. No.**

10:09AM **6 Q.** It's your testimony under oath that you weren't aware

10:09AM **7 that he was talking about homosexual rights?**

10:09AM **8 A. No.**

10:09AM **9 Q.** No idea?

10:09AM **10 A. Not when I arrived on the scene.**

10:10AM **11 Q.** And when you arrived on the scene, did you come to learn

10:10AM **12 that there were lots of homosexuals around?**

10:10AM **13 A. No.**

10:10AM **14 Q.** Did you come to learn that they were chanting homosexual

10:10AM **15 stuff?**

10:10AM **16 A. No.**

10:10AM **17 Q.** Did you come to learn that these were decorated heroes?

10:10AM **18 A. No.**

10:10AM **19 Q.** But yet your consideration, your alleged consideration of

10:10AM **20 their First Amendment rights was performed before you wanted**

10:10AM **21 them to be arrested? Yes or no?**

10:10AM **22 A. Correct.**

10:10AM **23 MR. FELDMAN: Could I have one moment, Judge? I'm sorry.**

10:11AM **24 BY MR. FELDMAN:**

10:11AM **25 Q.** I'm going to go to April 20th. Were you present on April

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		21
10:11AM	1	20th? Were you present on April 20th, same place, same cause,
10:11AM	2	but this time a bit bigger?
10:11AM	3 A.	What year?
10:11AM	4 Q.	Same year.
10:11AM	5 A.	2010?
10:11AM	6 Q.	Um-hmm.
10:11AM	7 A.	Yes.
10:11AM	8 Q.	How many people -- do you recall people being chained to
10:11AM	9	the fence?
10:11AM	10 A.	Yes.
10:11AM	11 Q.	How many people were chained to the fence?
10:11AM	12 A.	I don't recall the exact number, but there were more than
10:11AM	13	five.
10:11AM	14 Q.	Did you notice any transgender veterans chained to the
10:11AM	15	fence?
10:11AM	16 A.	I noticed people chained to the fence.
10:11AM	17 Q.	And you didn't bother -- in your consideration of
10:11AM	18	their -- I apologize. There came a time when you ordered their
10:12AM	19	arrest, correct?
10:12AM	20 A.	No.
10:12AM	21 Q.	There came a time when they were arrested under your
10:12AM	22	jurisdiction, correct?
10:12AM	23 A.	No.
10:12AM	24 Q.	You didn't supervise those arrests?
10:12AM	25 A.	No.
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		22
10:12AM	1 Q.	I'm assuming facts not in evidence. So you didn't order
10:12AM	2	those arrests? It was different than March, right?
10:12AM	3 A.	Correct.
10:12AM	4 Q.	Okay. I'm sorry. Thank you. I'm going to go back to
10:12AM	5	the March one and the April one, the same year. Did you ask
10:12AM	6	Lieutenant Choi if he had a key to those handcuffs? Yes or no?
10:12AM	7 A.	Yes.
10:12AM	8 Q.	What did he say?
10:12AM	9 A.	I believe he said he did.
10:12AM	10 Q.	Did you attempt to use the key or have your men attempt
10:12AM	11	to use the key to disengage himself from the fence?
10:12AM	12 A.	There was an attempt to use a key to disengage Mr. Choi
10:12AM	13	from the fence.
10:12AM	14 Q.	Without talking in the passive voice, who made that
10:13AM	15	attempt, if you know?
10:13AM	16 A.	I don't recall.
10:13AM	17 Q.	Was it one of your men or women?
10:13AM	18 A.	Yes.
10:13AM	19 Q.	And was he removed with the key?
10:13AM	20 A.	Which day?
10:13AM	21 Q.	March.
10:13AM	22 A.	I don't recall whether he was or not.
10:13AM	23 Q.	Okay. It's a long time ago. Do you have any notes about
10:13AM	24	that?
10:13AM	25 A.	No.
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		23
10:13AM	1 Q.	Did you receive any messages, electrically or other, from
10:13AM	2	other agencies from the federal government regarding either of
10:13AM	3	these demonstrations before the demonstration?
10:13AM	4	MS. GEORGE: Objection.
10:13AM	5	THE COURT: Overruled.
10:13AM	6	THE WITNESS: No.
10:13AM	7	BY MR. FELDMAN:
10:13AM	8 Q.	Did you have any conversations with Detective Sergeant
10:13AM	9	Hodge about his communication with other federal agencies
10:13AM	10	regarding these demonstrations?
10:13AM	11	MS. GEORGE: Objection. Assumes facts not in evidence.
10:13AM	12	MR. FELDMAN: I'm asking if he did.
10:13AM	13	THE COURT: It's cross-examination. You can continue.
10:13AM	14	MR. FELDMAN: For the record, he's hostile. Are you
10:14AM	15	declaring him hostile? Not in the real sense, Judge, in the
10:14AM	16	legal sense.
10:14AM	17	THE COURT: He's obviously part of a group of people that
10:14AM	18	arrested the defendant.
10:14AM	19	MR. FELDMAN: Thank you, Judge.
10:14AM	20	BY MR. FELDMAN:
10:14AM	21 Q.	Let's break it down. In March, did you receive any
10:14AM	22	communications in any form from any other federal governmental
10:14AM	23	agencies regarding the March demonstration and arrests?
10:14AM	24 A.	Not that I recall.
10:14AM	25 Q.	Okay. Now, on April 20th -- on April 20th, did you ask
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		24
10:14AM	1	Lieutenant Choi if he had a key?
10:14AM	2 A.	I don't know if I did or another of the officers did.
10:14AM	3 Q.	Did one of you guys or women do it? Did one of your
10:15AM	4	people do it?
10:15AM	5 A.	Do what?
10:15AM	6 Q.	Ask him for a key, captain.
10:15AM	7 A.	I believe I answered, which I said I do not know.
10:15AM	8 Q.	April.
10:15AM	9 A.	I believe I answered and said I do not know.
10:15AM	10 Q.	March you said you did not know.
10:15AM	11	THE COURT: But you don't know about April?
10:15AM	12	THE WITNESS: Correct.
10:15AM	13	MR. FELDMAN: Thank you.
10:15AM	14	BY MR. FELDMAN:
10:15AM	15 Q.	On March 18th, did you inform Lieutenant Choi and Captain
10:15AM	16	Pietrangelo that they would be able to -- did you ask them if
10:15AM	17	they were able to produce identification on the fence? In other
10:15AM	18	words, did you go up to these heroes, these veterans, and say,
10:15AM	19	You guys got any I.D.s? Yes or no?
10:15AM	20	MS. GEORGE: Objection, relevance.
10:15AM	21	THE COURT: No, overruled. Do you recall that?
10:15AM	22	THE WITNESS: Not while they're hanging on the fence, no,
10:15AM	23	I don't believe so.
10:15AM	24	BY MR. FELDMAN:
10:15AM	25 Q.	Okay. Did there come a time before you booked them --
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10:15AM **1** I'm using the old fashioned word -- that you asked them for

10:15AM **2** I.D.?

10:15AM **3 A.** **I don't know that I personally asked them for I.D., but**

10:16AM **4 that would be a standard question.**

10:16AM **5 Q.** And so, it wouldn't surprise you that -- so you're

10:16AM **6** saying -- do you remember talking to Lieutenant Dan Choi that

10:16AM **7** day?

10:16AM **8 A.** **Yes, I do.**

10:16AM **9 Q.** Do you recall talking to Captain Jim Pietrangelo that

10:16AM **10** day, tall skinny guy?

10:16AM **11 A.** **Yes, I do.**

10:16AM **12 Q.** Do you see him in the back or in the hallway today, if

10:16AM **13** you recall?

10:16AM **14 A.** **I don't recall seeing him today.**

10:16AM **15** MR. FELDMAN: Can you please get him.

10:16AM **16** BY MR. FELDMAN:

10:16AM **17 Q.** Do you recall asking -- I'll wait until he gets here.

10:17AM **18** I'm going to continue, but I'll come back to it. I want

10:17AM **19** to save time, Judge.

10:17AM **20** THE COURT: Okay.

10:17AM **21** BY MR. FELDMAN:

10:17AM **22 Q.** Regarding March 20th, you stated a few minutes ago that a

10:17AM **23** crowd gathered and that this crowd, quote, could have presented

10:17AM **24** a problem to park security, unquote. Do you remember saying

10:17AM **25** that?

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10:17AM **1 A.** **Do you mean March 18th?**

10:17AM **2 Q.** Yes. Thank you. Do you remember that?

10:17AM **3 A.** **That is correct.**

10:17AM **4 Q.** Did a problem happen?

10:17AM **5 A.** **No.**

10:17AM **6 Q.** Then why were they arrested?

10:17AM **7 A.** **Because the crowd that was there complied with police**

10:17AM **8 direction and left the area.**

10:17AM **9 Q.** So why was my client arrested?

10:17AM **10 A.** **Because he didn't leave the area as instructed.**

10:17AM **11 Q.** Wasn't he instructed to leave the sidewalk?

10:17AM **12 A.** **He was instructed to leave the White House area.**

10:17AM **13 Q.** You're absolutely sure of that?

10:17AM **14 A.** **The White House sidewalk, yes.**

10:17AM **15 Q.** Was he instructed to leave the White House sidewalk while

10:18AM **16** he was on the White House sidewalk? Yes or no?

10:18AM **17 A.** **He, in my belief, was on the White House sidewalk and**

10:18AM **18 that was where he was told to leave from.**

10:18AM **19 Q.** Did you obtain an opinion from another government agency

10:18AM **20** what the sidewalk means? Who is right by what sidewalk means?

10:18AM **21** MS. GEORGE: Objection, vague. In reference to what

10:18AM **22** point?

10:18AM **23** THE COURT: No, I think he understands. Do you understand

10:18AM **24** the question?

10:18AM **25** THE WITNESS: Yes, I do.

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10:18AM **1** THE COURT: Thank you, captain. Can you answer it please?

10:18AM **2** THE WITNESS: The other government agency stated that they

10:18AM **3** did not believe that the wall in which the defendant was standing

10:18AM **4** on was a part of the White House sidewalk.

10:18AM **5** THE COURT: So that ledge to which the fence is affixed,

10:18AM **6** they said it was or it wasn't?

10:18AM **7** THE WITNESS: They believed it was not.

10:18AM **8** THE COURT: Can you tell us who "they" are?

10:18AM **9** THE WITNESS: The D.C. Attorney General's Office.

10:19AM **10** Sidewalk, as it meant to the D.C. Attorney General's Office, for

10:19AM **11** a charge of failing to obey a lawful order.

10:19AM **12** BY MR. FELDMAN:

10:19AM **13 Q.** Name of the person, please?

10:19AM **14** MS. GEORGE: Objection. Objection, relevance.

10:19AM **15** THE COURT: Overruled.

10:19AM **16** THE WITNESS: I'm trying to remember the name, and I don't

10:19AM **17** recall whether it was -- I don't remember which person gave me

10:19AM **18** that exact information, but it was an attorney from the D.C.

10:19AM **19** Attorney General's Office.

10:19AM **20** BY MR. FELDMAN:

10:19AM **21 Q.** Do you have a copy -- was it by e-mail?

10:19AM **22 A.** **No.**

10:19AM **23 Q.** Was it oral?

10:19AM **24 A.** **Yes.**

10:19AM **25 Q.** By telephone?

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10:19AM **1 A.** **No.**

10:19AM **2 Q.** In person?

10:19AM **3 A.** **Yes.**

10:19AM **4 Q.** Was the person a man or a woman?

10:19AM **5 A.** **A woman.**

10:19AM **6 Q.** Was she African-American or white or Asian or something

10:19AM **7** else?

10:19AM **8 A.** **I didn't ask what her ethnic background was.**

10:20AM **9 Q.** Did she appear black or white?

10:20AM **10 A.** **She appeared white.**

10:20AM **11 Q.** Um-hmm. And was she -- did she appear to be under 50 or

10:20AM **12** over 50?

10:20AM **13 A.** **Under 50.**

10:20AM **14 Q.** Did she appear over 40 or under 40 or 40ish?

10:20AM **15 A.** **Again, it was probably 30 to 40.**

10:20AM **16 Q.** Okay. And was she dark haired or light haired?

10:20AM **17 A.** **I believe it was a female that told me this information,**

10:20AM **18 and I don't want to say the person's name because I'm not sure**

10:20AM **19 that that was exactly who said the information to me.**

10:20AM **20 Q.** Where was that information relayed to you?

10:20AM **21 A.** **In the D.C. Attorney General's Office.**

10:20AM **22 Q.** On what day?

10:20AM **23 A.** **I don't know.**

10:20AM **24 Q.** Was it before March 18th or after March 18th?

10:20AM **25 A.** **After.**

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10:20AM	1 Q.	Was it before April 20th or before April 20th?
10:20AM	2 A.	After.
10:20AM	3 Q.	Was it before November 15th or after November 15th?
10:20AM	4 A.	November 15th when?
10:20AM	5 Q.	2010.
10:21AM	6 A.	I don't know.
10:21AM	7 Q.	Okay. Was it before Labor Day 2010 or after Labor Day
10:21AM	8	2010?
10:21AM	9 A.	I don't know when the information was given to me.
10:21AM	10 Q.	Was it summer or fall? You don't know. Was it the year
10:21AM	11	2010?
10:21AM	12 A.	I believe I told you I don't know when the information
10:21AM	13	was given to me.
10:21AM	14 Q.	Okay. Oh, yeah. Are you aware that your Lieutenant
10:21AM	15	LaChance received e-mail from the Secret Service before November
10:21AM	16	15th, 2010?
10:21AM	17	MS. GEORGE: Objection, Your Honor, at this point in time.
10:21AM	18	BY MR. FELDMAN:
10:21AM	19 Q.	About the demonstration taking place on November 15th,
10:21AM	20	2010.
10:22AM	21 A.	No.
10:22AM	22 Q.	Okay. Let's go to --
10:22AM	23	MR. FELDMAN: You don't mind, Judge, if I have my
10:22AM	24	assistant helping me to save time? Thank you, Your Honor.
10:22AM	25	BY MR. FELDMAN:
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10:22AM	1 Q.	Let's go to November 15th, 2010, if you will. Were you
10:22AM	2	aware before noon on November 15th, 2010 that a similar
10:22AM	3	demonstration to protest President Obama's tardiness in
10:22AM	4	repealing Don't Ask, Don't Tell was to take place at the same
10:22AM	5	place as the other two?
10:22AM	6 A.	I don't recall if I did or not.
10:23AM	7 Q.	Okay. Did -- do you know Detective Timothy Hodge?
10:23AM	8 A.	Yes.
10:23AM	9 Q.	Were you his supervisor on November 15th, 2010?
10:23AM	10 A.	No.
10:23AM	11 Q.	Please explain to me or to the Court, was he lateral to
10:23AM	12	you? Give me the command structure regarding Mr. -- Detective
10:23AM	13	Hodge, please.
10:23AM	14 A.	He works for our criminal investigations branch which is
10:23AM	15	a separate division from mine.
10:23AM	16 Q.	It's still part of the Park's department?
10:23AM	17 A.	U.S. Park Police.
10:23AM	18 Q.	U.S. Park -- sorry, U.S. Park Police. And did he ever
10:23AM	19	discuss with you the demonstration that was going to occur on
10:23AM	20	November 15th, 2010 before it occurred with you, discuss it with
10:24AM	21	you?
10:24AM	22 A.	I don't know if he did or not.
10:24AM	23 Q.	Now, you would state, wouldn't you, that since you were
10:24AM	24	at that -- I don't know his rank so I'm going to refer to him,
10:24AM	25	if you don't mind, as LaChance, if that's okay, because there's
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10:24AM	1	some confusion here, but I don't know if it's my fault or your
10:24AM	2	fault. I'll refer to him as the individual LaChance. Did you
10:24AM	3	have any conversation?
10:24AM	4	MS. GEORGE: Can we refer to him as Lieutenant LaChance?
10:24AM	5	MR. FELDMAN: I didn't know what he was at the time.
10:24AM	6	BY MR. FELDMAN:
10:24AM	7 Q.	What rank did Lieutenant LaChance have at that time on
10:24AM	8	November 15th?
10:24AM	9 A.	I believe he was a lieutenant.
10:25AM	10 Q.	Okay. So, did you have any conversation with Lieutenant
10:25AM	11	LaChance shortly before November 15th about the demonstration
10:25AM	12	that was to occur on November 15th?
10:25AM	13 A.	I don't know.
10:25AM	14 Q.	You don't know or you don't remember?
10:25AM	15 A.	I don't recall.
10:25AM	16 Q.	And you don't remember any conversation with your man,
10:25AM	17	your, for lack of another word, your inferior -- only in the
10:25AM	18	legal sense -- regarding his communications received from the
10:25AM	19	Secret Service regarding that demonstration?
10:25AM	20 A.	Not that I recall.
10:25AM	21 Q.	Do you often receive communications from the Secret
10:25AM	22	Service regarding demonstrations? Is it standard?
10:25AM	23 A.	No, not necessarily.
10:26AM	24 Q.	Are you aware of Judge McCassey's -- I'm sorry, Attorney
10:26AM	25	General McCassey's executive order of 2007 prohibiting legal
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10:26AM	1	opinions interagency?
10:26AM	2	MS. GEORGE: Objection.
10:26AM	3	THE COURT: I don't understand what that means.
10:26AM	4	MR. FELDMAN: I'm sorry. Are you aware --
10:26AM	5	THE COURT: Is that an opinion of the Attorney General?
10:26AM	6	MR. FELDMAN: I think it's an order.
10:26AM	7	THE COURT: All right. Let me --
10:26AM	8	MR. FELDMAN: Yes, please look at it.
10:26AM	9	THE COURT: I'll look at it and see if I can take judicial
10:26AM	10	notice.
10:26AM	11	MS. GEORGE: Your Honor, may I have a copy of it?
10:26AM	12	THE COURT: Of course. We're going to let you see it.
10:26AM	13	Let's see if we can figure out what this is.
10:26AM	14	MR. FELDMAN: Can I -- let me wait for the judge.
10:27AM	15	THE COURT: All right. This is a memorandum to the heads
10:27AM	16	of departments from the U.S. Attorney General. "Subject:
10:27AM	17	Communications With the White House." The date is December 19th,
10:27AM	18	2007. Have you seen this, Ms. George?
10:27AM	19	MS. GEORGE: No, I have not, Your Honor.
10:27AM	20	THE COURT: Why don't you take a look at it.
10:27AM	21	MS. GEORGE: I'm sorry. And could the Court just repeat
10:27AM	22	what it just said? I apologize.
10:27AM	23	THE COURT: I just read the caption.
10:27AM	24	MS. GEORGE: Okay.
10:27AM	25	THE COURT: I don't have it in front of me, but I was just
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10:27AM	1	reading the first four lines of it into the record, that it is
10:27AM	2	from the Attorney General of the United States.
10:28AM	3	BY MR. FELDMAN:
10:28AM	4 Q.	By the way --
10:28AM	5	MS. GEORGE: Your Honor, could defense counsel wait until
10:28AM	6	I finish?
10:28AM	7	MR. FELDMAN: Sure.
10:28AM	8	THE COURT: Just take a moment.
10:28AM	9	MS. GEORGE: Your Honor, may I respond? I'm objecting to
10:28AM	10	the introduction of this.
10:28AM	11	THE COURT: Let's see if we can lay a foundation. Let's
10:28AM	12	see if the man has seen it. He can't tell us if he's seen it
10:29AM	13	unless he sees it.
10:29AM	14	MS. GEORGE: I understand, but based upon the agencies
10:29AM	15	included in here, there's no reason to ask Captain Beck any
10:29AM	16	questions about it. He doesn't work for the White House.
10:29AM	17	THE COURT: Why don't you show it to Captain Beck, and if
10:29AM	18	he says he hasn't seen it, we can move on.
10:29AM	19	And if Mr. Feldman wants to make an argument as to the
10:29AM	20	significance of Mr. Beck's testimony, we can hear it.
10:29AM	21	MS. GEORGE: Can we mark it for identification purposes?
10:29AM	22	THE COURT: Yes, let's mark it for purposes of
10:29AM	23	identification.
10:29AM	24	MS. GEORGE: And at some point in time the government
10:29AM	25	would like a opportunity to copy that.
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10:29AM	1	THE COURT: Of course.
10:29AM	2	MR. FELDMAN: Of course.
10:29AM	3	May I hand it to the witness, Judge?
10:29AM	4	THE COURT: Yes.
10:29AM	5	MR. FELDMAN: Please take your time and read it and let me
10:29AM	6	know if you ever saw it before.
10:32AM	7	THE COURT: Thank you.
10:32AM	8	MR. FELDMAN: May I take it back, Judge.
10:32AM	9	THE COURT: Yes.
10:32AM	10	BY MR. FELDMAN:
10:32AM	11 Q.	Captain Beck, have you ever seen that before?
10:32AM	12 A.	No.
10:32AM	13 Q.	I'm going to show you what's been previously marked --
10:32AM	14	while my assistant is finding it, I'll move on.
10:32AM	15	On April 20th, captain, why did you close Lafayette Park?
10:32AM	16 A.	I don't know that I closed Lafayette Park.
10:32AM	17 Q.	Weren't you the supervisor that day?
10:32AM	18 A.	I was not the instant commander, no.
10:33AM	19 Q.	Did you give any directions regarding the gay Don't Ask,
10:33AM	20	Don't Tell protest on April 20th, 2010? Yes or no?
10:33AM	21 A.	I don't believe I did. I believe Lieutenant LaChance was
10:33AM	22	in charge of that.
10:33AM	23 Q.	Fair enough. On March 18th, were the media posing a
10:33AM	24	threat?
10:33AM	25 A.	No.
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10:33AM	1 Q.	On March 18th, were the cameras posing a threat?
10:33AM	2 A.	What cameras?
10:33AM	3 Q.	Do you recall there being cameras there on March 18th?
10:33AM	4 A.	Yes.
10:33AM	5 Q.	Were the cameras posing a threat, any camera?
10:33AM	6 A.	No.
10:33AM	7 Q.	Do you recall the crowd that you claim was gathered there
10:33AM	8	to watch my client and Captain Pietrangelo express their First
10:33AM	9	Amendment rights posing a threat?
10:34AM	10 A.	Not upon my arrival, no.
10:34AM	11 Q.	So your testimony under oath is nobody in no shape, no
10:34AM	12	camera, no animals, no crowd, my client, captain, didn't pose a
10:34AM	13	threat?
10:34AM	14	MS. GEORGE: Objection, compound.
10:34AM	15	THE COURT: It's a characterization. Do you accept that
10:34AM	16	characterization? You don't have to. It's up to you. Please
10:34AM	17	testify.
10:34AM	18	THE WITNESS: At the time that I was dealing with it,
10:34AM	19	there was an incident that we were handling and there was no
10:34AM	20	threat at the time, no.
10:34AM	21	BY MR. FELDMAN:
10:34AM	22 Q.	Then why were they arrested?
10:34AM	23 A.	They were arrested because they didn't leave the area
10:34AM	24	that they were told to leave after three times.
10:34AM	25 Q.	The sidewalk?
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10:34AM	1 A.	Yes.
10:34AM	2 Q.	We've been through that already. I'm not going to beat
10:35AM	3	that one again.
10:35AM	4 A.	Okay. Thank you.
10:35AM	5 Q.	And would you make an effort to somehow remember the name
10:35AM	6	of the female white person who you spoke with involving who
10:35AM	7	allegedly told you that the pedestal is a sidewalk?
10:35AM	8	MS. GEORGE: Objection, argumentative.
10:35AM	9	THE COURT: No, you got it backward. He said it isn't.
10:35AM	10	MR. FELDMAN: Thank you.
10:35AM	11	MS. GEORGE: And argumentative. He already said he made
10:35AM	12	an effort and he couldn't remember.
10:35AM	13	THE COURT: Mr. Feldman, let me see if I can explain
10:35AM	14	something to you. It's unusual about this jurisdiction. There
10:35AM	15	are a certain level of offenses which are prosecuted not by the
10:35AM	16	U.S. Attorney's Office but by the Attorney General's Office. The
10:35AM	17	Attorney General's Office is the perfect equivalent of the
10:35AM	18	Corporation Counsel in the city of New York. It, therefore,
10:35AM	19	would follow that if the decision is made to do the prosecution
10:35AM	20	in the Superior Court, the prosecution would not be handled by
10:35AM	21	Ms. George's colleagues, but by the Attorney General's Office.
10:35AM	22	It has been my experience in other demonstration cases that the
10:36AM	23	Attorney General's Office staff may give legal guidance to
10:36AM	24	federal officers who are effectuating an arrest that that office
10:36AM	25	will prosecute in the Superior Court, which may explain why it
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10:36AM **1** seems at first mysterious that there would be a woman employed by

10:36AM **2** the District of Columbia who's giving advice to Captain Beck who

10:36AM **3** is obviously a federal agency officer.

10:36AM **4** MR. FELDMAN: Thank you. Thank you, Judge.

10:36AM **5** BY MR. FELDMAN:

10:36AM **6** **Q.** Speaking of that, why wasn't the instant case that you're

10:36AM **7** sitting here for today prosecuted in Superior Court, if you

10:36AM **8** know?

10:36AM **9** **A.** **That was a decision made by the D.C. Attorney General's**

10:36AM **10** **Office, not by me.**

10:36AM **11** **Q.** Are you familiar with the person who made the decision?

10:36AM **12** **A.** **No, I'm not.**

10:36AM **13** **Q.** Was it the same woman?

10:36AM **14** **A.** **I don't know.**

10:36AM **15** THE COURT: Captain, with all due respect, I'm afraid I

10:36AM **16** have to quarrel with that. Wouldn't that decision be made by the

10:36AM **17** U.S. Attorney and not the A.G.?

10:36AM **18** THE WITNESS: No, sir.

10:37AM **19** THE COURT: All right. When you are about ready to paper

10:37AM **20** your case, all right --

10:37AM **21** THE WITNESS: The case had been papered.

10:37AM **22** THE COURT: The case had been papered. Who papered the

10:37AM **23** case?

10:37AM **24** THE WITNESS: It may have been myself.

10:37AM **25** THE COURT: Okay. But who was the attorney --

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10:37AM **1** THE WITNESS: Who papered the case?

10:37AM **2** THE COURT: -- who prepared the accusatory information?

10:37AM **3** Was it a member of the D.C. Attorney General's Office?

10:37AM **4** THE WITNESS: D.C. Attorney General's Office because it

10:37AM **5** was a DCMR violation notice that they were charged with.

10:37AM **6** THE COURT: And this is the November offense?

10:37AM **7** THE WITNESS: No.

10:37AM **8** THE COURT: The April offense?

10:37AM **9** THE WITNESS: I believe April and March.

10:37AM **10** THE COURT: So those are D.C. offenses, and they go along

10:37AM **11** the prosecution in the Superior Court by the Attorney General's

10:37AM **12** Office?

10:37AM **13** THE WITNESS: Correct.

10:37AM **14** THE COURT: Who makes all the decisions with reference to

10:37AM **15** the case?

10:37AM **16** THE WITNESS: Correct.

10:37AM **17** THE COURT: Now, were you familiar with how the decision

10:37AM **18** was made in November?

10:37AM **19** THE WITNESS: No, sir.

10:37AM **20** MR. FELDMAN: Ms. George, this is the only copy that I

10:37AM **21** have of something that was previously admitted by the Judge,

10:38AM **22** actually. Do you remember?

10:38AM **23** MS. GEORGE: Um-hmm. It's in evidence.

10:38AM **24** MR. FELDMAN: I can't find it.

10:38AM **25** Thank you, Ms. George. I was yelling at Iana.

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10:38AM **1** MS. GEORGE: Oh, I understand.

10:38AM **2** MR. FELDMAN: Okay. Thank you. Your Honor, may I

10:38AM **3** approach the witness?

10:38AM **4** THE COURT: Sure.

10:38AM **5** MR. FELDMAN: I show you what's been previously marked as

10:38AM **6** Government's Exhibit 25. Please read it carefully and tell me

10:38AM **7** when you're done.

10:39AM **8** THE WITNESS: Okay.

10:39AM **9** BY MR. FELDMAN:

10:39AM **10** **Q.** Can I take it back?

10:39AM **11** **A.** **Sure.**

10:39AM **12** **Q.** Have you ever seen Government's Exhibit 25 before I

10:40AM **13** showed it to you today or a copy thereof?

10:40AM **14** **A.** **I don't believe so.**

10:40AM **15** **Q.** Did -- do you know Randy Myers, Esquire?

10:40AM **16** **A.** **Yes, I do.**

10:40AM **17** **Q.** Have you ever spoken to Randy Myers, Esquire about any of

10:40AM **18** these gay Don't Ask, Don't Tell demonstrations that occurred on

10:40AM **19** the White House sidewalk, alleged sidewalk?

10:40AM **20** **A.** **I don't differentiate between gay, whatever --**

10:40AM **21** **Q.** That wasn't the question, captain.

10:40AM **22** MS. GEORGE: Objection, Your Honor.

10:40AM **23** THE COURT: Please don't yell at him.

10:40AM **24** MS. GEORGE: Could he allow him to respond?

10:40AM **25** THE COURT: And you're also screaming in the microphone.

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10:40AM **1** Try it again.

10:40AM **2** THE WITNESS: I see counsel for Mr. Myers on a variety of

10:40AM **3** issues to include all -- demonstrations and things thereof.

10:40AM **4** BY MR. FELDMAN:

10:40AM **5** **Q.** The question is, did you see Randy Myers, Esquire or talk

10:40AM **6** to Randy Myers, Esquire, or communicate with Randy Myers,

10:41AM **7** Esquire about the gay demonstrations?

10:41AM **8** **A.** **No.**

10:41AM **9** **Q.** Ever in 2010?

10:41AM **10** **A.** **Not about the gay demonstrations.**

10:41AM **11** **Q.** How about the homosexual Don't Ask, Don't Tell ones?

10:41AM **12** **A.** **Don't Ask, Don't Tell, I may have used that term, but not**

10:41AM **13** **gay or not another slanderous term.**

10:41AM **14** **Q.** Oh, gay is a slanderous term, sir? Is it?

10:41AM **15** THE COURT: We don't need that. There comes a time when

10:41AM **16** you speak to Myers about this group of people who are going to

10:41AM **17** protest against Don't Ask, Don't Tell?

10:41AM **18** THE WITNESS: No, I did not.

10:41AM **19** THE COURT: You did not?

10:41AM **20** THE WITNESS: No.

10:41AM **21** BY MR. FELDMAN:

10:41AM **22** **Q.** Do you consider Don't Ask, Don't Tell a homosexual issue?

10:41AM **23** **A.** **I don't consider the issue at all. I consider myself to**

10:41AM **24** **be the protector of the person's right to demonstrate and**

10:41AM **25** **express their First Amendment opinions.**

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10:41AM **1 Q.** So then why did you arrest my client?

10:41AM **2 A.** Again, your client was told to leave the area and he did

10:41AM **3 not.**

10:41AM **4 Q.** I thought he was told to leave the sidewalk?

10:42AM **5 A.** He was.

10:42AM **6 Q.** And he wasn't on the sidewalk. The lawyer told you the

10:42AM **7 pedestal is not the sidewalk, correct?**

10:42AM **8 MS. GEORGE:** Objection. It's confusing periods of time.

10:42AM **9 THE COURT:** And it's also argumentive. Don't quarrel with

10:42AM **10 him.**

10:42AM **11 MR. FELDMAN:** That's right. It's clear.

10:42AM **12 Captain, please stand up.**

10:42AM **13 BY MR. FELDMAN:**

10:42AM **14 Q.** Do you recognize the individual standing up?

10:42AM **15 A.** Yes.

10:42AM **16 Q.** Who is he?

10:42AM **17 A.** It's Mr. Pietrangelo.

10:42AM **18 Q.** Captain Pietrangelo. Thank you, captain.

10:42AM **19 MR. FELDMAN:** Let the record reflect that Captain Beck

10:42AM **20 identified Captain Pietrangelo. So noted, Judge?**

10:42AM **21 THE COURT:** So noted.

10:42AM **22 MR. FELDMAN:** Captain, are you aware of the *Kilcher* case,

10:42AM **23 K-I-L-C-H-E-R?**

10:43AM **24 THE COURT:** I'm sorry?

10:43AM **25 MR. FELDMAN:** I'm sorry, the *Kilcher* case, K-I-L-C-H-E-R.

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10:43AM **1 THE COURT:** I know the name that came up. Just refresh my

10:43AM **2 recollection.**

10:43AM **3 MR. FELDMAN:** The Peruvian lady with the gasoline dowsing

10:43AM **4 or something.**

10:43AM **5 THE COURT:** There was a -- an event apparently where a

10:43AM **6 woman named Kilcher doused herself with oil. Does that ring any**

10:43AM **7 bells, captain?**

10:43AM **8 THE WITNESS:** No.

10:43AM **9 MR. FELDMAN:** I showed Ms. George a picture that I purport

10:43AM **10 to be a picture of Ms. Kilcher sitting on the pedestal.**

10:43AM **11 MS. GEORGE:** And the government would object to this

10:43AM **12 introduction.**

10:43AM **13 THE COURT:** Solely for the sake of refreshing the

10:43AM **14 captain's recollection and no other purpose.**

10:43AM **15 We're going to show you a picture of this person to see if**

10:43AM **16 it helps.**

10:43AM **17 MS. GEORGE:** Also it has writing on it that apparently

10:43AM **18 doesn't go to --**

10:43AM **19 THE COURT:** Captain, disregard the writing. Just look at

10:43AM **20 the image.**

10:43AM **21 MR. FELDMAN:** Ms. Coln, at your pleasure. What are you

10:43AM **22 calling it, Ms. Coln?**

10:43AM **23 THE COURTROOM CLERK:** This is going to be E. D was your

10:44AM **24 memorandum.**

10:44AM **25 MR. FELDMAN:** All right.

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10:44AM **1 (Defendant's Exhibit E marked.)**

10:44AM **2 MR. FELDMAN:** So marked by the deputy Defendant's Exhibit

10:44AM **3 E for identification purposes only.**

10:44AM **4 Give it to the Judge and to the witness, please.**

10:44AM **5 BY MR. FELDMAN:**

10:44AM **6 Q.** Does that refresh your recollection as to that arrest at

10:44AM **7 all?**

10:44AM **8 A.** No.

10:44AM **9 Q.** Okay. Thank you. Can I get it back?

10:44AM **10 A.** Sure.

10:44AM **11 Q.** Thank you, sir.

10:44AM **12 MS. GEORGE:** Your Honor, the government moves to strike

10:44AM **13 the reference to arrest. That fact is not in evidence.**

10:44AM **14 THE COURT:** Yeah, okay.

10:45AM **15 BY MR. FELDMAN:**

10:45AM **16 Q.** Was the decision made to deploy mass arrest crowd control

10:45AM **17 before the November 15th arrest? Yes or no?**

10:45AM **18 MS. GEORGE:** Objection. In reference to which incident?

10:45AM **19 THE COURT:** Before November 15 -- first let's see if we

10:45AM **20 can back up a bit. Is there a procedure called mass arrest**

10:45AM **21 procedure that you're familiar with?**

10:45AM **22 THE WITNESS:** Yes.

10:45AM **23 THE COURT:** Tell us just briefly what it is.

10:45AM **24 THE WITNESS:** It's a procedure that we employ to safeguard

10:45AM **25 the visitors to the park area and the persons that are**

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10:45AM **1 demonstrating, the officers that are working there, so that we**

10:45AM **2 can cordon off an area once we determine there's a violation and**

10:45AM **3 we're going to proceed with arresting folks that may be in**

10:46AM **4 violation.**

10:46AM **5 THE COURT:** So the elements are cordoning off the area?

10:46AM **6 THE WITNESS:** Correct.

10:46AM **7 THE COURT:** And then giving the warnings, I take it?

10:46AM **8 THE WITNESS:** Correct.

10:46AM **9 THE COURT:** And then removing the people?

10:46AM **10 THE WITNESS:** Correct.

10:46AM **11 THE COURT:** Cuffing them with the plastic cuffs and taking

10:46AM **12 them to the can?**

10:46AM **13 THE WITNESS:** That's correct.

10:46AM **14 THE COURT:** That's the summation. That's what counsel is

10:46AM **15 referring to.**

10:46AM **16 BY MR. FELDMAN:**

10:46AM **17 Q.** Isn't it an absolute incontrovertible fact that that

10:46AM **18 decision, as the judge so articulately made out the fine**

10:46AM **19 elements of, was made before the demonstration even started?**

10:46AM **20 I'm referring to November 15th, 2010. Yes or no?**

10:46AM **21 MR. FELDMAN:** And let the record reflect that the captain

10:46AM **22 is looking over at Angela George.**

10:46AM **23 THE COURT:** No, he isn't. He's looking over at me.

10:46AM **24 THE WITNESS:** To the best of my recollection, I wasn't

10:46AM **25 involved in the November 15th, so I don't know what you're**

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10:46AM	1	talking about.
10:46AM	2	BY MR. FELDMAN:
10:46AM	3 Q.	Who was involved?
10:46AM	4 A.	I don't know.
10:46AM	5 Q.	Okay. Okay. Are you familiar or you don't know about
10:47AM	6	this one either, the Osama bin Laden death rally the night that
10:47AM	7	he was killed? Yes or no?
10:47AM	8	MS. GEORGE: Objection.
10:47AM	9	THE COURT: Do you know anything about something that
10:47AM	10	occurred at the White House on the evening of -- on the evening
10:47AM	11	after the president announced that Osama bin Laden was dead?
10:47AM	12	THE WITNESS: Yes, after it occurred.
10:47AM	13	THE COURT: You learned after it occurred? You were not
10:47AM	14	on the site?
10:47AM	15	THE WITNESS: I was sleeping peacefully.
10:47AM	16	THE COURT: Good for you.
10:47AM	17	BY MR. FELDMAN:
10:47AM	18 Q.	So you testified that -- I'm almost done, Judge -- that
10:47AM	19	you stated that a crowd gathered and that it could have
10:47AM	20	presented a problem to park security, but you never personally
10:47AM	21	saw the problem. My question is, is it the custom, policy, and
10:47AM	22	practice of the United States Park Police to make an arrest even
10:48AM	23	before a problem exists? Yes or no?
10:48AM	24	MS. GEORGE: Objection, vague, Your Honor.
10:48AM	25	THE COURT: Overruled. Do you understand the question?
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10:48AM	1	THE WITNESS: I don't understand where you're going with
10:48AM	2	problem.
10:48AM	3	BY MR. FELDMAN:
10:48AM	4 Q.	You don't have to know where I'm going.
10:48AM	5 A.	No, I don't understand what you mean by "problem."
10:48AM	6	THE COURT: I think that is the term. See if you can
10:48AM	7	rephrase it.
10:48AM	8	BY MR. FELDMAN:
10:48AM	9 Q.	Well, what term would you use, posing a threat? Is it
10:48AM	10	the custom, policy, and practice of the United States Park
10:48AM	11	Police to make an arrest even before an actual posing of a
10:48AM	12	threat to the public exists? Yes or no?
10:48AM	13 A.	I don't make an arrest unless I have probable cause and I
10:48AM	14	believe it's correct to make an arrest.
10:48AM	15	MR. FELDMAN: Move to strike as nonresponsive, Your Honor.
10:48AM	16	I'll rephrase.
10:48AM	17	THE COURT: No, I thought it was responsive. It was
10:48AM	18	responsive. When you make an arrest, he told you.
10:48AM	19	MR. FELDMAN: After the probable cause exists.
10:48AM	20	THE WITNESS: Correct.
10:48AM	21	BY MR. FELDMAN:
10:48AM	22 Q.	But you stated you didn't see any probable cause existing
10:48AM	23	that day, correct?
10:48AM	24	MS. GEORGE: Objection, assumes facts not in evidence.
10:48AM	25	THE COURT: No. At what point -- and when you're talking
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10:49AM	1	"that day," you mean April 20th.
10:49AM	2	On that day, can you please tell us how you formulated the
10:49AM	3	decision to make the arrest or ordered the arrest?
10:49AM	4	MS. GEORGE: And, Your Honor, with all due respect, I
10:49AM	5	believe the date is March 18th, 2010.
10:49AM	6	THE COURT: I'm sorry. What did I say?
10:49AM	7	MS. GEORGE: April 20th.
10:49AM	8	THE COURT: All right. On either of those days, did
10:49AM	9	you -- were you the person that made the decision that the arrest
10:49AM	10	should take place?
10:49AM	11	THE WITNESS: On March 18th.
10:49AM	12	THE COURT: Could you please tell us how you came to make
10:49AM	13	that decision that you believe that you should direct that those
10:49AM	14	arrests should be made.
10:49AM	15	THE WITNESS: Correct. After we cordoned off the area, we
10:49AM	16	gave Mr. Choi and Mr. Pietr --
10:49AM	17	BY MR. FELDMAN:
10:49AM	18 Q.	You mean Lieutenant Choi and Captain Pietrangelo?
10:49AM	19	THE COURT: Stop. He was right in the middle of a
10:49AM	20	sentence. Please go on.
10:49AM	21	THE WITNESS: Mr. Pietrangelo and Mr. Choi, they were
10:49AM	22	warned to leave the area because they were in violation of
10:49AM	23	regulations that apply to the White House area and the White
10:49AM	24	House sidewalk. They failed to leave the area after three
10:50AM	25	warnings. We gave them another two minutes to leave the area.
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10:50AM	1	They failed to do so, and they were arrested.
10:50AM	2	THE COURT: So, therefore, the probable cause was the
10:50AM	3	failure to obey the order to depart?
10:50AM	4	THE WITNESS: Correct.
10:50AM	5	THE COURT: Thank you.
10:50AM	6	BY MR. FELDMAN:
10:50AM	7 Q.	Was that order lawful?
10:50AM	8	MS. GEORGE: Objection. That's a legal question.
10:50AM	9	THE COURT: I think I'm going to try to resolve that. I
10:50AM	10	appreciate your help.
10:50AM	11	MR. FELDMAN: And with that statement, no further
10:50AM	12	questions.
10:50AM	13	THE COURT: Thank you, counsel. Captain, just for my
10:50AM	14	edification, a long time ago it was the practice on occasion that
10:50AM	15	representatives of either the U.S. Attorney's Office or the
10:50AM	16	Attorney General's Office would be at the scene of a mass arrest.
10:50AM	17	In fact, I've seen films of that. Do you recall that the woman
10:50AM	18	who gave you the advice, was she at the scene at the
10:50AM	19	demonstration?
10:50AM	20	THE WITNESS: On March 18th?
10:50AM	21	THE COURT: On any time.
10:50AM	22	THE WITNESS: We've had U.S. attorneys and members of the
10:51AM	23	OAG at arrest sites.
10:51AM	24	THE COURT: But this woman gave you the advice in her
10:51AM	25	office?
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10:51AM **1** THE WITNESS: Which advice?

10:51AM **2** THE COURT: The advice about the ledge.

10:51AM **3** THE WITNESS: Yes, this was in the office.

10:51AM **4** THE COURT: So she was not on the site?

10:51AM **5** THE WITNESS: Correct.

10:51AM **6** THE COURT: Thank you so much. Any questions?

10:51AM **7** MS. GEORGE: Yes, Your Honor, I have several questions.

10:51AM **8** CROSS-EXAMINATION OF PHILIP J. BECK

10:51AM **9** BY MS. GEORGE:

10:51AM **10** Q. Captain Beck, let's go back, I guess to the very

10:51AM **11** beginning. And could you please start with when you became a

10:51AM **12** law enforcement officer with the United States Park Police?

10:51AM **13** A. **I was hired by the United States Park Police in December**

10:51AM **14** **of 1988.**

10:51AM **15** Q. And could you please explain to the Court and try to

10:51AM **16** summarize your experience with the Park Police from 19 -- I

10:51AM **17** think you said -- did you say '88?

10:51AM **18** A. **Yes, ma'am.**

10:51AM **19** Q. Until presently?

10:51AM **20** A. **Yes, ma'am. I was trained at the federal law enforcement**

10:51AM **21** **training center in Glynco --**

10:51AM **22** **THE COURT REPORTER: I'm sorry, please slow down.**

10:51AM **23** THE WITNESS: The federal law enforcement training center

10:51AM **24** in Glynco, Georgia.

10:52AM **25** BY MS. GEORGE:

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10:52AM **1** Q. And just try to slow down.

10:52AM **2** A. **Sure. I did my training there, went through field**

10:52AM **3** **training. And then the next 22 years is kind of a blur, but**

10:52AM **4** **quite a substantial amount of training through the United States**

10:52AM **5** **Park Police to include law, crowd control, crowd management,**

10:52AM **6** **handling demonstrators, handling other folks, throughout my**

10:52AM **7** **entire career.**

10:52AM **8** Q. And did you receive any training or did you conduct any

10:52AM **9** training with regard to mass arrest procedures?

10:52AM **10** A. **Yes, ma'am.**

10:52AM **11** Q. Is that received training and conducted training?

10:52AM **12** A. **Yes, ma'am.**

10:52AM **13** Q. And could you please tell the Court how you came up the

10:52AM **14** ranks in the Park Police? So when you first started, what was

10:52AM **15** your rank and then how did you move to advance in rank?

10:52AM **16** A. **When I was first hired, I was a recruit and then went to**

10:52AM **17** **private, officer. I was promoted to sergeant, I believe in**

10:53AM **18** **1996, promoted to lieutenant in 2001, and promoted to captain**

10:53AM **19** **last year.**

10:53AM **20** Q. And on March 18th, 2010, you already told the Court that

10:53AM **21** you were authorized to give the arrest if there was a necessary

10:53AM **22** arrest; is that correct?

10:53AM **23** A. **Correct.**

10:53AM **24** Q. And what was your role on March 18th, 2010?

10:53AM **25** A. **On March 18th we were finishing up a S.W.A.T. repel and**

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10:53AM **1** **we got a call from an officer at the White House sidewalk area**

10:53AM **2** **that there was a large group of demonstrators on the White House**

10:53AM **3** **sidewalk, and they requested us to come for assistance.**

10:53AM **4** Q. Okay. You said you were finishing up a S.W.A.T.

10:53AM **5** preparation school?

10:53AM **6** A. **A repel school.**

10:53AM **7** Q. A repel school?

10:53AM **8** A. **Um-hmm.**

10:53AM **9** Q. But what was your specific role? First, let me ask you

10:53AM **10** this. Were you working and on duty at the time that that call

10:53AM **11** came in?

10:53AM **12** A. **Yes, ma'am.**

10:53AM **13** Q. And what was your specific role? Were you the shift

10:54AM **14** commander, watch commander?

10:54AM **15** A. **No, I was the S.W.A.T. and K-9 lieutenant.**

10:54AM **16** Q. And what did -- what duties go along with that particular

10:54AM **17** role?

10:54AM **18** A. **I'm responsible for the overall operation of our S.W.A.T.**

10:54AM **19** **team, our K-9 squad, and, as I said, demonstrations, special**

10:54AM **20** **events, crowd management, as well as the technical aspects of**

10:54AM **21** **calling out special weapons and tactics or K-9 deployments for**

10:54AM **22** **the United States Park Police.**

10:54AM **23** Q. So the S.W.A.T. unit actually plays a specific role in

10:54AM **24** the monitoring of demonstrations at the White House?

10:54AM **25** A. **Our Special Forces does, and we fall underneath our**

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10:54AM **1** **Special Forces branch.**

10:54AM **2** Q. What other units of the Park Police participate in the

10:54AM **3** mass arrest procedures in reference to demonstrations?

10:54AM **4** A. **It depends on how large it is. It could be a full force**

10:54AM **5** **commitment, as it was for several demonstrations that have**

10:55AM **6** **occurred, including the inaugural.**

10:55AM **7** Q. Let's talk about what it generally is, and then we'll

10:55AM **8** talk about what happened on March 18th.

10:55AM **9** MR. FELDMAN: Objection. It's beyond the scope of direct.

10:55AM **10** THE COURT: No, I think the scope of direct was to

10:55AM **11** demonstrations.

10:55AM **12** MR. FELDMAN: Okay.

10:55AM **13** MS. GEORGE: So could you please explain generally which

10:55AM **14** units of the Park Police are involved --

10:55AM **15** THE WITNESS: -- typically --

10:55AM **16** BY MS. GEORGE:

10:55AM **17** Q. Captain Beck, it's important that you let me finish the

10:55AM **18** question for the record, so I'm going to try to repeat it.

10:55AM **19** Could you please explain to the Court what units of the Park

10:55AM **20** Police are generally involved in the mass arrest process?

10:55AM **21** A. **Typically, it's units assigned to our Special Forces,**

10:55AM **22** **which includes our motors, our K-9, and our S.W.A.T. teams.**

10:55AM **23** Q. Is the identification unit involved?

10:55AM **24** A. **They are, yes.**

10:55AM **25** MR. FELDMAN: Leading.

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10:55AM **1** THE WITNESS: We have integrated them into our --

10:55AM **2** THE COURT: Overruled.

10:55AM **3** THE WITNESS: -- into our procedures, yes.

10:55AM **4** BY MS. GEORGE:

10:55AM **5 Q.** Now, on March 18th -- And before I ask that question, the

10:56AM **6** identification unit, what specific duties do they execute in

10:56AM **7** reference to mass arrest procedures?

10:56AM **8 A.** **Our identification unit is responsible for filming our**

10:56AM **9 actions as well as the actions of the demonstrators at a site as**

10:56AM **10 well as photographing the arrestees as we bring them through the**

10:56AM **11 processing.**

10:56AM **12 Q.** Okay. Now let's move to 3-18-2010.

10:56AM **13** I think you already testified that you were working on

10:56AM **14** duty that day. Could you -- and you said that a beat officer

10:56AM **15** put in a call to let you know that there was some activity at

10:56AM **16** the White House sidewalk, correct?

10:56AM **17 A.** **Correct.**

10:56AM **18 Q.** Could you please tell the Court what happened after that

10:56AM **19** point in time?

10:56AM **20 A.** **By the time that I had arrived on the scene, the only**

10:56AM **21 folks that were left on the White House sidewalk area were**

10:56AM **22 Mr. Choi and Mr. Pietrangelo. And they were -- they had**

10:56AM **23 attached themselves to the fence in the center portion area.**

10:56AM **24 Q.** And in preparation for this case that's in trial today,

10:57AM **25** did you have an opportunity to view a video that partially

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10:57AM **1** memorializes the events at the White House sidewalk on March

10:57AM **2** 18th, 2010?

10:57AM **3 A.** **Yes, ma'am.**

10:57AM **4 Q.** I want to show you Government's Exhibit 45. Are your

10:57AM **5** initials on that exhibit?

10:57AM **6 A.** **Yes, ma'am.**

10:57AM **7 Q.** And what date is next to your initials?

10:57AM **8 A.** **August 29th.**

10:57AM **9 Q.** Now, August 29th was this past Monday, correct?

10:57AM **10 A.** **Um-hmm.**

10:57AM **11 Q.** And isn't it accurate that prior to Monday you also

10:57AM **12** viewed that video?

10:57AM **13 A.** **Yes, ma'am.**

10:58AM **14** MS. GEORGE: At this point in time, the government is

10:58AM **15** playing Exhibit 45.

10:58AM **16** THE COURT: Thank you, ma'am.

11:00AM **17** (Videotape played.)

11:00AM **18** BY MS. GEORGE:

11:00AM **19 Q.** Lieutenant Beck, did you hear the voice that was just

11:00AM **20** placed on Government's Exhibit 45?

11:00AM **21 A.** **Yes, ma'am.**

11:00AM **22 Q.** Whose voice was that?

11:00AM **23 A.** **That was my voice.**

11:00AM **24 Q.** And please explain to the Court what's going on at this

11:00AM **25** point in time.

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11:00AM **1** MR. FELDMAN: Objection, cumulative.

11:00AM **2** THE COURT: Overruled. You're going to -- did we just

11:00AM **3** hear your voice?

11:00AM **4** THE WITNESS: Yes, sir.

11:00AM **5** THE COURT: Fine. Please tell us what's occurring.

11:00AM **6** THE WITNESS: I had just given the folks that had attached

11:00AM **7** themselves to the fence the first warning to leave the area.

11:00AM **8** BY MS. GEORGE:

11:00AM **9 Q.** And when you give that warning, do you give it --

11:00AM **10** MR. FELDMAN: Objection. It wasn't -- it wasn't "area,"

11:00AM **11** it was sidewalk.

11:00AM **12** THE COURT: All right. In any event, whatever you're

11:00AM **13** calling it, Captain Beck, did you give the warning?

11:01AM **14** THE WITNESS: Yes, sir.

11:01AM **15** BY MS. GEORGE:

11:01AM **16 Q.** And did you give it from memory?

11:01AM **17 A.** **No, ma'am.**

11:01AM **18 Q.** Are you reading from something at that point in time?

11:01AM **19 A.** **Yes, ma'am.**

11:01AM **20 Q.** And isn't it a fact that you're reading from what could

11:01AM **21** be characterized as a warning sheet? Isn't that correct?

11:01AM **22 A.** **Yes, ma'am.**

11:01AM **23 Q.** I've marked for identification purposes Government's

11:01AM **24** Exhibit 48.

11:01AM **25** MR. FELDMAN: Judge, it's already in.

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11:01AM **1** MS. GEORGE: No, it's not.

11:01AM **2** MR. FELDMAN: The same exact boilerplate is already in,

11:01AM **3** Judge.

11:01AM **4** THE COURT: Let me see it, please.

11:01AM **5** MS. GEORGE: Your Honor, can I just stop for a moment.

11:01AM **6** First of all, Mr. Feldman has not even read what I have in my

11:01AM **7** hand. I'm about to give him a copy. And I would like for him --

11:01AM **8** THE COURT: Please give it to him. That would be very

11:01AM **9** gracious of you. Thank you.

11:02AM **10** (Brief pause in proceedings.)

11:02AM **11** THE COURT: Have you seen it?

11:02AM **12** THE WITNESS: Thank you, sir.

11:02AM **13** MS. GEORGE: Your Honor, Ms. Litz is trying to locate a

11:02AM **14** copy for Mr. Feldman.

11:03AM **15** MR. FELDMAN: Yes, boilerplate.

11:03AM **16** THE COURT: Fine. It's boilerplate. Let's see if we can

11:03AM **17** go. This is what you were reading from?

11:03AM **18** THE WITNESS: Yes, sir.

11:03AM **19** THE COURT: And I noticed when I saw the document it has a

11:03AM **20** top part and a middle part. Do you recall -- how do they differ?

11:03AM **21** Which one were you supposed to use on this occasion?

11:03AM **22** THE WITNESS: I used the top one, which is the center

11:03AM **23** portion of the sidewalk.

11:03AM **24** THE COURT: Now that's very important. Please read that

11:03AM **25** warning to me.

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11:03AM 1 THE WITNESS: "This is Lieutenant Phil Beck of the United
 11:03AM 2 States Park Police. You're in violation of regulations
 11:03AM 3 applicable to this area, specifically that individuals may
 11:03AM 4 demonstrate while carrying signs on the center portion of the
 11:03AM 5 sidewalk comprising ten yards on either side of the center point
 11:03AM 6 of the sidewalk."
 11:03AM 7 If they continue to move along the sidewalk: "You must
 11:03AM 8 leave the closed portion of the White House sidewalk now. All
 11:03AM 9 persons remaining on the closed portion of the White House
 11:03AM 10 sidewalk will be arrested."
 11:03AM 11 THE COURT: So, as you gave that warning, it was your
 11:03AM 12 perception that they were violating the regulation that says that
 11:04AM 13 if you are going to demonstrate in front of the White House, you
 11:04AM 14 must keep moving?
 11:04AM 15 THE WITNESS: Correct.
 11:04AM 16 THE COURT: And you are permitted to carry a sign?
 11:04AM 17 THE WITNESS: Correct.
 11:04AM 18 THE COURT: And these gentlemen were violating that
 11:04AM 19 regulation and your order was lawful, therefore, because they
 11:04AM 20 were not in movement?
 11:04AM 21 THE WITNESS: Correct, in addition to the folks that had
 11:04AM 22 been there prior with the signs on the sidewalk.
 11:04AM 23 THE COURT: I'm sorry, I never saw anyone -- that's
 11:04AM 24 before?
 11:04AM 25 THE WITNESS: That was before I got there.

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11:04AM 1 THE COURT: Before you got there?
 11:04AM 2 THE WITNESS: Correct.
 11:04AM 3 THE COURT: But this is the scene you confronted.
 11:04AM 4 THE WITNESS: Correct.
 11:04AM 5 THE COURT: You did not give the second warning with
 11:04AM 6 reference to a permit, but the first warning and the warning
 11:04AM 7 speech, the necessity to keep moving.
 11:04AM 8 THE WITNESS: Correct.
 11:04AM 9 THE COURT: Thank you.
 11:04AM 10 MS. GEORGE: Yes, Your Honor. Has the government's -- I'm
 11:04AM 11 sorry. Has the Court admitted Government's Exhibit --
 11:04AM 12 THE COURT: Yes.
 11:04AM 13 MR. FELDMAN: On consent.
 11:04AM 14 THE COURT: Consented, and he also read the first part
 11:04AM 15 anyway.
 11:05AM 16 BY MS. GEORGE:
 11:05AM 17 Q. I'm going to continue to play Government's Exhibit 45.
 11:05AM 18 (Videotape played.)
 11:08AM 19 THE COURT: That's the third one?
 11:08AM 20 THE WITNESS: Yes, sir.
 11:08AM 21 THE COURT: And now we're going to witness the removal
 11:08AM 22 from the -- is that -- I'm sorry, why do we have to see anymore
 11:08AM 23 of it, Ms. George?
 11:08AM 24 MS. GEORGE: Your Honor, the Court announced to the
 11:08AM 25 government this morning that it made a *prima facie* case of

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11:08AM 1 selective prosecution, and the Court promised the government that
 11:08AM 2 at that point in time --
 11:08AM 3 THE COURT: Oh, I see. So this bears on the selective
 11:08AM 4 prosecution. Okay.
 11:08AM 5 (Videotape played.)
 11:08AM 6 THE COURT: Maybe if you stop it I'll see if he can answer
 11:08AM 7 my question. I'll ask Captain Beck a question that will help me.
 11:08AM 8 Now, we know on this date these gentlemen would be
 11:09AM 9 prosecuted under District of Columbia law.
 11:09AM 10 THE WITNESS: Correct.
 11:09AM 11 THE COURT: Captain, what law are they violating that is
 11:09AM 12 an offense against the District of Columbia?
 11:09AM 13 THE WITNESS: Again, that was failure to obey a lawful
 11:09AM 14 order.
 11:09AM 15 THE COURT: So there is a provision of the D.C. code under
 11:09AM 16 which these gentlemen would be prosecuted that speaks to failing
 11:09AM 17 to obey an order. Is that part of the disorderly conduct
 11:09AM 18 statute?
 11:09AM 19 THE WITNESS: Yes, sir, I believe it is, and it
 11:09AM 20 specifically pertains to driveways, sidewalks, streets,
 11:09AM 21 passageways, entrances.
 11:09AM 22 THE COURT: So, therefore, the District of Columbia law
 11:09AM 23 speaks of sidewalks generically, whether they're in front of the
 11:09AM 24 White House, in front of Georgetown, or in the northeast, right?
 11:09AM 25 THE WITNESS: Correct.

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11:09AM 1 THE COURT: And so these gentlemen would be prosecuted for
 11:09AM 2 that violation of District of Columbia law?
 11:10AM 3 THE WITNESS: That was our intent, yes.
 11:10AM 4 THE COURT: That was your intention. I see.
 11:10AM 5 MS. GEORGE: And Your Honor, just to clarify a little bit,
 11:10AM 6 the disorderly conduct statute is under the D.C. code. It's not
 11:10AM 7 memorialized in the D.C. municipal regulations.
 11:10AM 8 THE COURT: All right.
 11:10AM 9 MS. GEORGE: They both are D.C. offenses, and the Code of
 11:10AM 10 Federal Regulation has equal charges.
 11:10AM 11 THE COURT: Yeah, I'm aware of that, but in terms of the
 11:10AM 12 selective prosecution, we all agree that the charges on the -- of
 11:10AM 13 the two springtime events, the one on the 18th and the one on the
 11:10AM 14 20th, they are going to be under the disorderly conduct statute,
 11:10AM 15 right?
 11:10AM 16 THE WITNESS: That is correct.
 11:10AM 17 THE COURT: Now, you're not familiar with the prosecution
 11:10AM 18 in November, are you?
 11:10AM 19 THE WITNESS: Correct.
 11:10AM 20 THE COURT: Did you make any decision with reference to
 11:10AM 21 November in terms of what charges would be brought?
 11:10AM 22 THE WITNESS: No.
 11:10AM 23 THE COURT: Thank you.
 11:10AM 24 BY MS. GEORGE:
 11:10AM 25 Q. Just in response to the Court's question, the Court

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11:10AM **1** asked -- on March 18th and April 20th, those individuals that

11:10AM **2** were arrested at the White House sidewalk would be charged under

11:11AM **3** the disorderly conduct, and you said yes. What were they

11:11AM **4** charged with on March 18th, these two individuals here? What

11:11AM **5** were they charged with?

11:11AM **6** THE WITNESS: Failure to obey a lawful order.

11:11AM **7** BY MS. GEORGE:

11:11AM **8** **Q.** And is that under the D.C. code or under the D.C.

11:11AM **9** municipal regulations?

11:11AM **10** **A.** **It's under D.C. municipal regulations, I believe.**

11:11AM **11** **Q.** Right, right. And do you know whether or not that is the

11:11AM **12** same or different from the disorderly conduct offense that

11:11AM **13** someone could be charged for?

11:11AM **14** **A.** **Disorderly -- there are numerous charges which I believe**

11:11AM **15** **they could have been charged with, and this is the charge that**

11:11AM **16** **we chose to proceed with.**

11:11AM **17** **Q.** Okay. So there are other offenses under the D.C. code or

11:11AM **18** D.C. municipal regulations that Park Police or the Park Police

11:11AM **19** believed on March 18th, 2010 that you could have charged them

11:11AM **20** with?

11:11AM **21** **A.** **As well as the Code of Federal Regulations, yes.**

11:11AM **22** THE COURT: So now this offense is going to be prosecuted

11:12AM **23** in the Superior Court and charge a violation of the D.C.

11:12AM **24** municipal regulations?

11:12AM **25** THE WITNESS: Your Honor, that was the intent; however, I

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11:12AM **1** believe both of those cases have been dismissed.

11:12AM **2** THE COURT: But that would have been the intent?

11:12AM **3** THE WITNESS: Yes, sir.

11:12AM **4** THE COURT: But the papering decision is charge this as a

11:12AM **5** violation in Superior Court under the D.C. municipal regulations?

11:12AM **6** THE WITNESS: Correct.

11:12AM **7** THE COURT: And they pertain to the failure to obey a

11:12AM **8** lawful order --

11:12AM **9** THE WITNESS: Correct.

11:12AM **10** THE COURT: -- to move on a sidewalk?

11:12AM **11** THE WITNESS: Correct.

11:12AM **12** THE COURT: Thank you.

11:12AM **13** MS. GEORGE: And the questions you just responded to the

11:12AM **14** Court about, those are in relationship to the Park Police

11:12AM **15** thinking at the time that the Park Police made the arrest; isn't

11:12AM **16** that correct?

11:12AM **17** THE WITNESS: Correct.

11:12AM **18** BY MS. GEORGE:

11:12AM **19** **Q.** So, at the time you're making the arrest, you hadn't

11:12AM **20** spoken to the Office of the Attorney General about what charges

11:12AM **21** would or would not apply in this particular circumstance in

11:12AM **22** reference to this particular incident?

11:12AM **23** **A.** **No, not in reference to the particular incident, no.**

11:12AM **24** **Q.** And so after these two individuals were arrested, you, as

11:13AM **25** well as other officers, engaged yourselves in what the Court has

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11:13AM **1** characterized as the papering process; isn't that correct?

11:13AM **2** MR. KENT: That's alleged.

11:13AM **3** MS. GEORGE: It's cross-examination.

11:13AM **4** THE COURT: I'll allow it because this is unclear. Go

11:13AM **5** ahead.

11:13AM **6** BY MS. GEORGE:

11:13AM **7** **Q.** You and other officers of the Park Police engaged in what

11:13AM **8** the Court has described as the papering process; isn't that

11:13AM **9** correct?

11:13AM **10** **A.** **Correct.**

11:13AM **11** **Q.** And could you tell us what your understanding is of the

11:13AM **12** papering process with the office of the Attorney General's

11:13AM **13** Office?

11:13AM **14** **A.** **The Office will bring, basically, a case jacket to the**

11:13AM **15** **D.C. Attorney General's Office, present the reports that they**

11:13AM **16** **compiled for the arrest that was made. The D.C. Attorney**

11:13AM **17** **General's Office attorneys will review it, determine its**

11:13AM **18** **properness or legality, and determine whether or not the case**

11:13AM **19** **will be papered, which means presented for court.**

11:13AM **20** **Q.** Okay. Now --

11:13AM **21** THE COURT: And at that point the Attorney General, just

11:13AM **22** like Ms. George, can say, no paper?

11:14AM **23** THE WITNESS: Correct.

11:14AM **24** THE COURT: And if it's no papered, these people that have

11:14AM **25** been arrested have to be released?

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11:14AM **1** THE WITNESS: Correct.

11:14AM **2** THE COURT: Now, okay. Is that what happened on the 18th

11:14AM **3** and the 20th with reference to these two gentlemen?

11:14AM **4** THE WITNESS: To the best of my knowledge, yes.

11:14AM **5** THE COURT: So it never got to the point of seeing the

11:14AM **6** judge? They never saw a judge in Superior Court?

11:14AM **7** THE WITNESS: I don't know whether they did or not.

11:14AM **8** THE COURT: Okay. Well -- but whether they saw a judge or

11:14AM **9** not, the case was no papered -- the decision was decided not to

11:14AM **10** prosecute.

11:14AM **11** THE WITNESS: The case was papered; it was dismissed at a

11:14AM **12** later date.

11:14AM **13** THE COURT: Papered and then dismissed?

11:14AM **14** THE WITNESS: Yes, Your Honor.

11:14AM **15** THE COURT: Thank you.

11:14AM **16** MS. GEORGE: And then do you know whether after that

11:14AM **17** dismissal the Park Police made efforts to present the case to the

11:14AM **18** United States Attorney's Office on March 18th or April 20th?

11:14AM **19** THE WITNESS: In regards to those cases?

11:14AM **20** BY MS. GEORGE:

11:14AM **21** **Q.** Yes.

11:14AM **22** **A.** **I don't believe so.**

11:15AM **23** **Q.** I'm going to continue to play Government's Exhibit 45 at

11:15AM **24** this time.

11:15AM **25** THE COURT: Ms. George, I'm afraid I'm at a loss. If we

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11:15AM 1 have now explored the difference in the nature of -- shut that

11:15AM 2 off. If we have now explored the difference in the nature of the

11:15AM 3 charges made, why does seeing this again bear on it?

11:15AM 4 MS. GEORGE: Your Honor, because the entire -- the Court

11:15AM 5 has said that the government, the prosecution has engaged in

11:15AM 6 selective prosecution.

11:15AM 7 THE COURT: I did not say anything of the sort.

11:15AM 8 MS. GEORGE: You said that --

11:15AM 9 THE COURT: I said, in ruling on a motion to compel, that

11:15AM 10 you should advise the civil division first that there might be

11:15AM 11 claims of deliberative process in the law privilege and to guide

11:15AM 12 you and help you because I'm familiar with the body of law that

11:15AM 13 pertains to that, that you should tell them that I have found a

11:16AM 14 *prima facie* case of selective prosecution.

11:16AM 15 MS. GEORGE: Yes.

11:16AM 16 THE COURT: I have never said that it's selective

11:16AM 17 prosecution. That's a decision that I am yet to resolve.

11:16AM 18 MS. GEORGE: I stand corrected, Your Honor.

11:16AM 19 THE COURT: Okay.

11:16AM 20 MS. GEORGE: But given that the Court has found a *prima*

11:16AM 21 *facie* case of selective prosecution, what the government takes

11:16AM 22 that to mean, because I read the case law, is that the Court has

11:16AM 23 determined, without making any specific findings, that the

11:16AM 24 defendant was similarly situated with some other individuals.

11:16AM 25 THE COURT: No. That may be one aspect of it.

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11:16AM 1 MS. GEORGE: That's one of the elements.

11:16AM 2 THE COURT: The second aspect of it is that on two

11:16AM 3 occasions he performed acts and he was prosecuted in a certain

11:16AM 4 way. On a third occasion, he performed an act which he claims to

11:16AM 5 be similar and he was treated in a different way. That is the

11:16AM 6 heart and soul of the selective prosecution.

11:16AM 7 Mr. Kent can correct me, but I have never understood him

11:16AM 8 to say that he was comparing himself to other demonstrators. I

11:17AM 9 thought the claim sought the prosecution, as has now been defined

11:17AM 10 by the lieutenant's testimony, is that I did X and Y in March and

11:17AM 11 April, but in November when I once again expressed my rights, I

11:17AM 12 was treated entirely different; therefore, they were

11:17AM 13 discriminating against me on the basis of the content of my

11:17AM 14 speech and because they were being vindictive in their

11:17AM 15 prosecution.

11:17AM 16 MS. GEORGE: Well, Your Honor --

11:17AM 17 THE COURT: So if there were other -- there are no other

11:17AM 18 demonstrations at issue, besides the three that we have been

11:17AM 19 focusing on.

11:17AM 20 MS. GEORGE: Right. I understand that, Your Honor, but

11:17AM 21 the government has no idea what the defendant is claiming because

11:17AM 22 he --

11:17AM 23 THE COURT: I think -- I don't know how the Lieutenant

11:17AM 24 could have been any clearer.

11:17AM 25 MS. GEORGE: Well, can I have the opportunity to make the

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11:17AM 1 record, Your Honor?

11:17AM 2 THE COURT: Sure. Go ahead.

11:17AM 3 MS. GEORGE: Because the defense has not reduced to a

11:17AM 4 motion in writing as to specifically whether the --

11:17AM 5 THE COURT: At the end of these proceedings, assuming they

11:17AM 6 ever end, I'm going to ask for briefs from both sides so we can

11:17AM 7 shape the issues, and Mr. Kent can speak for his client, but as I

11:18AM 8 understand Lieutenant Kim's [sic] testimony, it was that, not

11:18AM 9 that other people who demonstrated about whales or environmental

11:18AM 10 issues or anything else. His claim of selective prosecution is

11:18AM 11 that after I did something in March and I did it in April, they

11:18AM 12 began to form the decision to treat me radically different in

11:18AM 13 November. They did that to punish me for the expression of my

11:18AM 14 First Amendment rights, and therefore that was to be selectively

11:18AM 15 prosecuted, to be vindictively prosecuted because of the content

11:18AM 16 of what I was saying. I don't understand him to be saying that,

11:18AM 17 please compare me to demonstrators that were there on the 19th

11:18AM 18 and the 20th and 21st.

11:18AM 19 Maybe I misunderstand. As I said, I don't want to take

11:18AM 20 words out of Mr. Kent's mouth, but Mr. Kent can articulate his

11:18AM 21 position if he wishes.

11:18AM 22 MS. GEORGE: And the government is trying to state to the

11:18AM 23 Court that the law requires different. He has not squarely --

11:19AM 24 THE COURT: But you can certainly make that argument

11:19AM 25 without us seeing it for the fifth or sixth time.

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11:19AM 1 MS. GEORGE: I understand, but the government is

11:19AM 2 proceeding in the dark Your Honor, so I have to put the facts

11:19AM 3 into the record.

11:19AM 4 THE COURT: Well, let me illuminate it, all right.

11:19AM 5 MS. GEORGE: Well, could you have defense counsel

11:19AM 6 articulate the position?

11:19AM 7 THE COURT: Surely, but I heard Lieutenant Kim's [sic]

11:19AM 8 testimony in that shape, and admittedly --

11:19AM 9 MS. GEORGE: Lieutenant Kim?

11:19AM 10 THE COURT: Lieutenant Choi. Excuse me. I'm awfully

11:19AM 11 sorry. The two of you have the most magnificent ability to

11:19AM 12 interrupt me when I'm right in the middle of a thought. It's

11:19AM 13 really -- You shaped your original brief on the selective

11:19AM 14 prosecution invoking cases that speak to selective prosecution

11:19AM 15 with the premise of the discrimination, the discrimination that

11:19AM 16 is condemned in itself by the Fourth and Fifth Amendments which

11:19AM 17 would, for example, be race. They prosecuted the white people on

11:20AM 18 one page, the black people on another. I don't understand the

11:20AM 19 lieutenant to now be saying -- his claim of selective prosecution

11:20AM 20 is refined. What he is saying is that I did something on

11:20AM 21 March -- in March and April, and it was little more than a

11:20AM 22 traffic ticket. When I returned to the White House, I was

11:20AM 23 observed getting off the Metro, and I was taken -- when I got

11:20AM 24 there, the ultimate consequence to me was radically different;

11:20AM 25 therefore, I have been subject to a violation of my rights to due

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11:20AM 1 process under the Fifth Amendment because I have been singled out

11:20AM 2 for treatment because of the expression I made.

11:20AM 3 MS. GEORGE: I understand that, Your Honor.

11:20AM 4 THE COURT: Now, I think it's clumsy to call that

11:20AM 5 selective prosecution. I think a better term for it would be

11:20AM 6 vindictive prosecution or violation of the First Amendment right

11:20AM 7 to cause a prosecution. So that -- as I say, Mr. Kent is going

11:20AM 8 to get up in a minute and correct me, I hope, if I've gotten it

11:21AM 9 wrong. So that effect, as I understand how this is going to be

11:21AM 10 shaped -- As I said, I'm going to give each of you an opportunity

11:21AM 11 to shape these issues by supplemental briefs based on all the

11:21AM 12 evidence.

11:21AM 13 My point is I am now intimately familiar with all of these

11:21AM 14 arrests, and seeing them again is unnecessary. What is crucial

11:21AM 15 is to get to the testimony of people like Myers and others who

11:21AM 16 will now illuminate the complicated issues that we are presented

11:21AM 17 which I think we all agree are really worthy of the highest

11:21AM 18 priority now that we have the fundamental understanding of the

11:21AM 19 defendant.

11:21AM 20 MS. GEORGE: Your Honor, I hear what the Court is saying,

11:21AM 21 but in order for the government to brief anything and argue to

11:21AM 22 the Court that the defendant's claim is or is not what he

11:21AM 23 purports it to be, the facts have to be in the record, and --

11:21AM 24 THE COURT: And the facts pertaining to the two

11:21AM 25 demonstrations, what occurred, they are not only in the record,

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11:21AM 1 they are documented in an exhibit that I have now seen five or

11:21AM 2 six times.

11:21AM 3 MS. GEORGE: Yeah, but the facts regarding the particular

11:22AM 4 issue of selective prosecution are not necessarily in the record.

11:22AM 5 THE COURT: But I'm not sure why I have to see this again.

11:22AM 6 MS. GEORGE: Because I need to ask Captain Beck questions

11:22AM 7 about his state of mind when he gave the order of arrest, whether

11:22AM 8 he told any of the officers to consider the sexual orientation of

11:22AM 9 the defendants at this point in time.

11:22AM 10 THE COURT: Again -- thank you, Mr. George. Mr. Kent.

11:22AM 11 MS. GEORGE: Your Honor, can I state one more thing on the

11:22AM 12 record, please?

11:22AM 13 THE COURT: Sure.

11:22AM 14 MS. GEORGE: And the government cited the cases in its

11:22AM 15 motion in limine, one, because Mr. Feldman on August 25th in a

11:22AM 16 telephone conference inarticulately stated that he was advancing

11:22AM 17 selective prosecution after the Court summarized it. That's why

11:22AM 18 we filed our motion in limine. And then our understanding of the

11:22AM 19 law is that the defendant has to aver, for the Court to find a

11:22AM 20 *prima facie* case, that he was treated -- that the difference in

11:22AM 21 treatment resulted in discriminatory effect and had

11:23AM 22 discriminatory intent on behalf of the prosecution at the time

11:23AM 23 that it occurred, and that similarly situated individuals weren't

11:23AM 24 treated the same. And so the government believes that the

11:23AM 25 defendant has not done that at this point in time, and I

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11:23AM 1 understand the Court's ruling, but if that --

11:23AM 2 THE COURT: The Court hasn't made a ruling yet. I'd like

11:23AM 3 to hear, if I may --

11:23AM 4 MS. GEORGE: I thought the Court ruled that there was a

11:23AM 5 *prima facie* case for selective prosecution.

11:23AM 6 THE COURT: As I defined it.

11:23AM 7 MS. GEORGE: That's what I'm referring to.

11:23AM 8 THE COURT: It's a *prima facie* case that's sufficient to

11:23AM 9 convince me that there should be a legitimate inquiry into the

11:23AM 10 decision-making process that led to the conclusion that in

11:23AM 11 November charges would have been brought that were different from

11:23AM 12 the charges that were brought in March and April, both in their

11:23AM 13 nature and in their consequence.

11:23AM 14 MS. GEORGE: And the law says that if the Court is making

11:23AM 15 that ruling, that the Court must not proceed with trial, the

11:23AM 16 Court must pause the proceedings and have the parties brief it.

11:23AM 17 And if the Court finds, in fact, that there is a ruling that

11:23AM 18 occurred, then the government must turn over discovery, but the

11:23AM 19 Court must not proceed with the trial.

11:24AM 20 THE COURT: If that is a motion to suspend these

11:24AM 21 proceedings, it is denied.

11:24AM 22 MS. GEORGE: Your Honor, it's denied?

11:24AM 23 THE COURT: Yes. You may proceed. Mr. Kent, I apologize

11:24AM 24 for putting words in your mouth, but maybe you can --

11:24AM 25 MR. KENT: No. The Court --

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11:24AM 1 THE COURT: -- right the ship that has been so

11:24AM 2 graciously --

11:24AM 3 MR. KENT: The Court stated it eloquently. First, on a

11:24AM 4 personal level, it's inappropriate for Ms. George to disparage

11:24AM 5 Mr. Feldman by saying he inarticulately filed a motion. He

11:24AM 6 suggested a line of defense in a pretrial matter in a discovery

11:24AM 7 proceeding with Ms. George. What I have done is crystallized

11:24AM 8 that defense by filing a motion to compel alleging that the

11:24AM 9 United States has engaged in selective or vindictive prosecution

11:24AM 10 under the doctrine of *Oyler v. Boles*, 368 U.S. 448, a 1962 case,

11:24AM 11 where we're showing that in this particular case -- and obviously

11:24AM 12 it doesn't involve race or religion --

11:25AM 13 MS. GEORGE: -- Your Honor --

11:25AM 14 THE COURT: Please don't interrupt counsel when he's in

11:25AM 15 the middle of a sentence.

11:25AM 16 MS. GEORGE: I just don't want Captain Beck's testimony

11:25AM 17 influenced.

11:25AM 18 THE COURT: The officer is an experienced officer. He's

11:25AM 19 heard legal arguments before. Please don't do that. Go ahead,

11:25AM 20 Mr. Kent.

11:25AM 21 MR. KENT: What I was saying is what I have alleged in

11:25AM 22 this motion is simply that we are asking for certain documents to

11:25AM 23 help further our discovery efforts to elicit the potentiality

11:25AM 24 that there was an arbitrary classification utilized in this case

11:25AM 25 that may have extended to the Office of the President of the

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11:25AM 1 United States in conjunction with the U.S. Secret Service so as
 11:25AM 2 to charge Lieutenant Dan Choi not in D.C. Superior Court as
 11:25AM 3 Captain Beck has articulated has been done in other situations
 11:25AM 4 similarly situated -- but Dan Choi went to that demonstration
 11:25AM 5 expecting that if he was going to be charged at all, he may have
 11:25AM 6 been charged with that sidewalk/garage/driveway regulation and
 11:26AM 7 not be before an eminent United States District Court magistrate
 11:26AM 8 facing a six-month criminal prosecution.
 11:26AM 9 THE COURT: Then, Mr. Kent, we are agreed that there is no
 11:26AM 10 complaint here --
 11:26AM 11 MR. KENT: -- correct --
 11:26AM 12 THE COURT: -- that lieutenant Kim -- Choi. Why do I keep
 11:26AM 13 doing that? I'm so sorry. Lieutenant Choi was -- is there any
 11:26AM 14 claim that the prosecution here violated the Fifth or Fourteenth
 11:26AM 15 Amendment because it was premised on Lieutenant Kim's sexual
 11:26AM 16 orientation?
 11:26AM 17 MR. KENT: Lieutenant Choi.
 11:26AM 18 THE COURT: Lieutenant Choi's sexual orientation.
 11:26AM 19 MR. KENT: None that has been articulated by the
 11:26AM 20 defendant.
 11:26AM 21 THE COURT: Thank you.
 11:26AM 22 MR. KENT: We simply ask in this motion for the United
 11:26AM 23 States Attorney to produce documents, and we would expect, as a
 11:26AM 24 result of that discovery, to be able to better brief the issue of
 11:27AM 25 vindictive prosecution.

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11:27AM 1 And this witness has further established the premise of
 11:27AM 2 that case by answering the Court's inquiries as to the papering
 11:27AM 3 process, and there's a famous Jewish phrase which I know that
 11:27AM 4 Mr. Scott's not going to be able to record it. It goes
 11:27AM 5 Mah-neesh-tana-hz-li-lah-ha-zeh-me-cal-ha-lay-los, which means,
 11:27AM 6 why is this day --
 11:27AM 7 MR. FELDMAN: Why is this day different from all the rest.
 11:27AM 8 MR. KENT: Thank you, Robert. And that's what we're
 11:27AM 9 getting at. Why is this prosecution so different from all other
 11:27AM 10 prosecutions that individuals can chain themselves to the White
 11:27AM 11 House fence, jump on trees in the Osama demonstrations, and
 11:27AM 12 others that -- We have a list that --
 11:27AM 13 THE COURT: I think I have your point, Mr. Kent.
 11:27AM 14 MR. KENT: You have my point.
 11:27AM 15 THE COURT: I'll give you all a fulsome opportunity to
 11:27AM 16 brief these issues, but I just wanted to -- Ms. George was
 11:27AM 17 complaining that she didn't understand the nature of the
 11:28AM 18 discrimination that you were claiming.
 11:28AM 19 MR. KENT: Well, I'm sure you'll assist Ms. George with
 11:28AM 20 that.
 11:28AM 21 THE COURT: I'm sorry?
 11:28AM 22 MR. KENT: I didn't mean to interrupt. I'm sure you can
 11:28AM 23 assist Ms. George in understanding the law.
 11:28AM 24 THE COURT: Right now I'm going to assist everybody by
 11:28AM 25 giving a short break for our court reporter, 15 minutes.

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11:28AM 1 In terms of scheduling, how much more do we have with
 11:28AM 2 Captain Beck?
 11:28AM 3 MR. FELDMAN: I'm calling Mr. Myers.
 11:28AM 4 THE COURT: How much more?
 11:28AM 5 MS. GEORGE: I have extensively a lot more, Your Honor,
 11:28AM 6 about selective prosecution.
 11:28AM 7 THE COURT: All right. Then as we line up -- the reason
 11:28AM 8 I'm asking all of this is that I have a settlement conference at
 11:28AM 9 3:30 I suspect I should cancel.
 11:28AM 10 MR. FELDMAN: Thank you, sir.
 11:28AM 11 THE COURT: Thank you, captain. Do not discuss your
 11:28AM 12 testimony with anyone.
 11:28AM 13 THE WITNESS: Yes, sir.
 11:28AM 14 (Thereupon, a break was had from 11:28 a.m. until
 11:43AM 15 11:43 a.m.)
 11:43AM 16 MS. GEORGE: Your Honor, the government would beg the
 11:44AM 17 Court's indulgence for a few more minutes. I would like to speak
 11:44AM 18 to my supervisor.
 11:44AM 19 THE COURT: Certainly.
 11:44AM 20 MS. GEORGE: He's on his way, just so the Court knows.
 11:45AM 21 THE COURT: Ms. George, you had an application for a brief
 11:45AM 22 continuance, so you want us to wait for someone?
 11:45AM 23 MS. GEORGE: Yes, Your Honor. I believe he should be here
 11:45AM 24 in about ten minutes.
 11:45AM 25 THE COURT: All right. I'll be in the jury room.

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12:30PM 1 (Recess taken from 11 11:45 a.m. to 12:30 p.m.)
 12:30PM 2 (Thereupon, a luncheon recess was had beginning at
 3 12:30 p.m.)
 4
 5 **C E R T I F I C A T E**
 6
 7 I, Scott L. Wallace, RDR-CRR, certify that
 the foregoing is a correct transcript from the record of
 proceedings in the above-entitled matter.
 8
 9 -----
Scott L. Wallace, RDR, CRR **Date**
Official Court Reporter
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